CRESCENT
COLLEGE OF ACCOUNTANCY

12th Edition
Spring 2024

CAF-07

Company Law

Volume -1

Study Notes +
Examinations Questions + MCQs
(Covering All Chapters of Syllabus)

By:Muhammad Asif (FCA)

Sallent Features:

- Full Coverage of ICAP's Latest Syllabus of CAF – 07.
- Unique "Exam Focussed Concept-Based Approach" of Author.
- Every concept written in student-friendly vocabulary and sentence-structure, Key words formatted as Bold to easily memorize and revise the subject.
- Every Concept Supplemented by Past Exam Questions for immediate evaluation.
- Now, the book includes all Examples/Questions from ICAP's Study Text along with complete solutions, prepared by author (no copy-paste of ICAP's Book or Suggested Solutions

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12th Edition: For Spring 2024

Company Law, 12/e (Volume - 1)

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Special Thanks to **Atif Farooq** for his valuable inputs during preparation of this book.

Dear Students:

A lot of students think that, in exam, it is necessary to describe/explain a concept in exactly same words as are written in ICAP's Study Texts. This perception was promoting "rote learning". Therefore, a query was raised with ICAP. ICAP answered this question at following link:
Replying to the issue, ICAP has uploaded a guidance on this issue (dated November 22, 2018) on its website at following link:
https://www.icap.org.pk/files/per/students/edu-training/pdf/FAQsv4-Special-Circumstances-240320.pdf

This query and its answer is reproduced below for your reference:

Q. During ICAP examinations, if a student explains the required concept in his or her own words instead of exactly reproducing ICAP's Study Texts wordings, will marks be deducted just for using own words instead of exact ICAP's Study Texts wordings?

A. Testing of memory is not an objective of ICAP's examination system. Correct alternate phrasing of answers is marked on merit during the assessment process. It may be noted that practical questions and papers at advanced stage involve testing of concepts. Such questions require students to write answers in their own words as answers to such questions are not directly available in the Study Texts. However, certain questions related to law sometimes require use of exact legal terminologies in the answers and cannot be replaced with own wordings.

(underlining is mine for the purpose of emphasis)

From the above guidance, it may be concluded that:

1. ICAP tests concepts, therefore exact reproduction of wording is NOT required.
2. Case studies require students to write answer in their own words, therefore, technique of memorizing will fail in such questions.
3. Certain standardized and legal terminologies should not be replaced with own wording (e.g. Fiduciary behavior, Proxy, Quorum, Vacation of office, Ultra-vires, Mortgage, Line of Business, Resolution, Association, Dividend, Subscription, Prospectus).

Therefore, if you find any book which is easy to understand as compared to official study text, you can safely shift to that book, provided entire syllabus is covered.

Muhammad Asif, FCA

Reasons of Failure and Suggestions for Successful Performance in Company Law (CAF – 07)

Reasons of Failure:

Reasons specified by examiner of ICAP:

1. Not reading requirement of the question carefully. (answer should be given exactly in line with requirements and marks of question)
2. Giving answers in general way (and not specific to given situation)
3. Selective Studies (Early topics are well prepared by students, but ending topics are usually weak.).
4. Insufficient practice of case studies (Cramming is not enough; written practice of case studies is also necessary)

Reasons NOT specified by examiner of ICAP (based on my experience):

1. Coming late in class or being absent from class (and then trying to convince teacher to repeat the lecture by asking questions already discussed).
2. Using mobile during class (for games, messaging, or just to check if it is functioning).
3. Not listening to questions of others during class (by thinking this is irrelevant for me and then asking the same question after two minutes).
4. Not attempting class tests (thinking that I will attempt this test later when I will be fully prepared; which never happens).

Remember, Company Law is not a difficult subject. You can easily (I repeat, easily) pass the subject if you can commit yourself to three things: Attend classes regularly, study the subject daily for 2-hours, and attempt regular class tests.

Suggested Approach To Attempt Paper:

- Arrive early at the exam.
- Read question. If it is a theoretical question, read requirement twice, write chapter # in front of question and underline key words/concept asked in requirement.
- Read question. If it is a case study, read requirement first and write chapter # in front of question. Then start reading case, underline key words/information in the case keeping requirement in mind. You can also write key words on your question paper (but do not share your question paper with anyone.). **Read case twice.** Decide format of presentation.
- Now, start writing on answer script. Attempt all theory questions first (to get confidence) and case studies later (when you are warm-up).
- Write "what is asked", NOT "what you know".
- Allocate time in accordance with marks.
- Attempt all questions (two half answers may get more marks than one full question).
- Write correct number to your attempted questions (including sub-parts).

And the most important thing to remember and follow is
"Key to Success is PRAYER".

How to Solve Case Study of Company Law

01. Identify whether it is a Case study or Question of reproduction

Following are some hints to identify case studies:

1. Usually, a case study consists of long paragraph(s), while a question of reproduction consists of 2-3 lines.

2. Usually, case study gives us specific information about a company, and/or some discussion/arguments by its members or directors [Case will specify **Names** of companies/members/directors].

3. Usually, requirement of Case Study asks us to:
   - **analyze** the situation, and/or
   - **comment/advise** on **whether** statements/proposals given in the information are in accordance with Companies Act, and/or
   - **how/what course of action** to take to implement these proposals.

02. How to attempt case study of Company Law

Divide your answer in two parts i.e.

Relevant Legal Provision:
Think about the Chapter and Learning Objective on which this case is based. Reproduce that concept here, but only that portion which is relevant to case (whole concept is not to be produced).
Note: You can omit this part, if marks are less (e.g. 2)

Decision and Basis of Decision:
- State your decision (e.g. yes or no).
- Give reasons. Reason means linking the specific information (names, relations, days etc.) given in the question with relevant legal provision. **(This is the real skill which requires practice)**

Note: Headings and Arrangements of Parts is recommended, but not required.

How To Use This Book

This book is divided into two volumes i.e. Volume – I which includes all concepts and questions discussed in ICAP's Study Text, and Volume – II which includes additional MCQs, Concept Review Questions and Case Studies (alongwith suggested solutions) for further practice of examination questions.

Following is a recommended approach for students to follow:

Volume – I:

- First select a chapter you want to cover (in Volume – 1) and read its learning objectives one by one. Do not go to next learning objective until you understand the previous concept. Read the questions at the end of learning objective to evaluate yourself. If you can attempt that question(s), move forward to next learning objective, otherwise go back and revise it.
- After you have completed volume – 1, there is high assurance that you have completed your whole syllabus. However, if you wish, you can once read your official study text. But, don't memorize from Official Book because, in my experience, student find official study text **difficult to memorize and revise**, particularly **in last days of exam.**

Volume – II:

- After you finish a chapter from Volume – I, go to Volume – II of the book (which is integral part of your study material), and try to attempt MCQs, Concept Review Questions and Case Studies of same chapter **in writing**. Compare your attempted Questions/Cases with suggested solutions to identify if you are on right track.
- Remember, that case studies are quite different from concept review questions. In concept review questions, you are expected to cover all points of a question. However, in case studies, many different solutions with different presentations and wording are possible. Therefore, you don't need to exactly match your answer word by word. If you are able to match about 70% – 80% key points in case studies, you have attempted case study very well.
- Also remember, it is not necessary to attempt all Questions/Cases (though you should try to attempt maximum questions depending on time availability). Good practice is better than lot of practice. Focus on understanding questions, not on attempting questions.

Some further Tips:

- Although this book has been written on self-study basis, it is always better to get coaching classes if you can.
- If your teacher teaches with a different arrangement of concepts/chapters, follow your teacher. However, make sure you cover all concepts/chapters in the syllabus.
- This book is updated as at date of publication (mentioned below). Do not use previous notes or editions of the book, without consultation of teacher, because they may have become obsolete due to changes in law or syllabus.

Muhammad Asif, FCA
September 27, 2023
Lahore

Important Note for Students:

If there is any change in the syllabus or book (i.e. revision, addition, deletion, correction) after the date of publication, it will be shared with you through following shared folder of google drive.

shorturl.at/uFJZ3

You are advised to note this URL (whether using small or caps letter), and visit it frequently for any possible revisions during the session.

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Company Law		
Grid	**Chapters**	**Weightage**
A. Incorporation and Issuance of Shares	1, 2, 5, 6	**15 - 20**
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D. Accounts and Dividends	9, 11	**15 - 20**
E. Winding up	12	**15 - 20**
		100

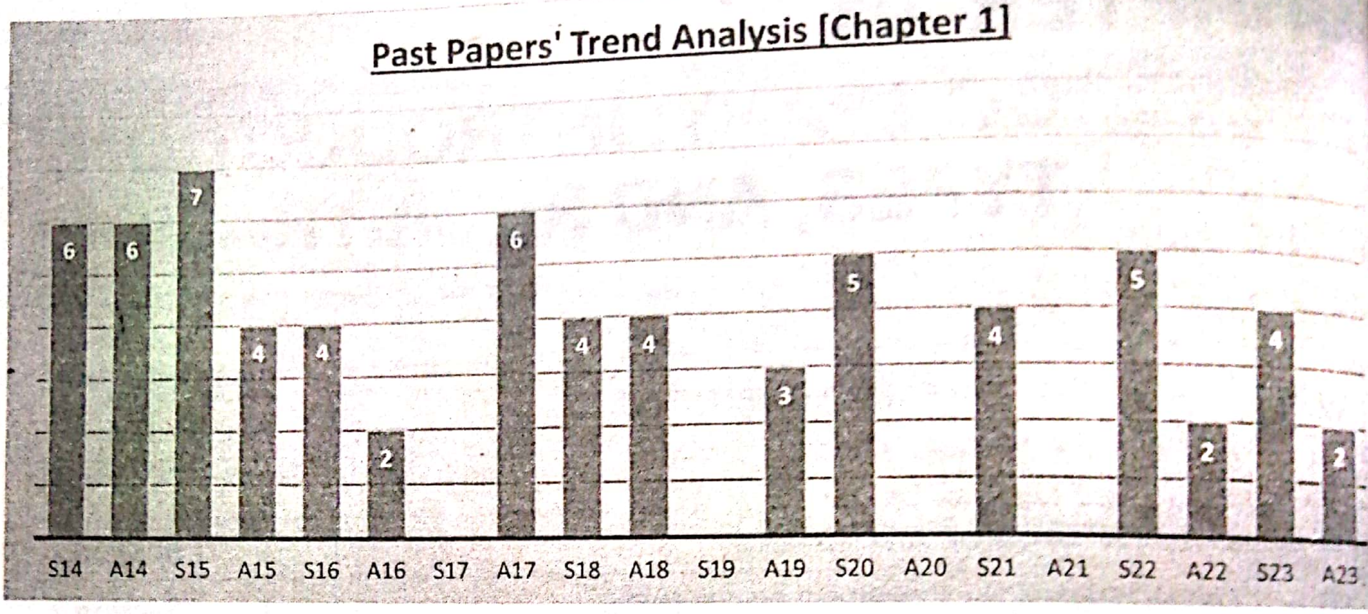
CHAPTER 01

COMPANY: INTRODUCTION, TYPES, AND REGISTRATION

LO #	LEARNING OBJECTIVE	ICAP Book Reference	
		Chapter #	Paragraph #
LO 1	THE FEATURES OF A COMPANY	1	Section 1
LO 2	DEFINITION AND TYPES OF COMPANIES	1	Section 2
LO 3	AUTHORITIES, OFFICIALS, MEMBERS AND RESOLUTIONS	1	Section 3
LO 4	ASSOCIATION NOT FOR PROFIT U/S 42	1	Section 4
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APPENDIX:

APX 1	OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT)
APX 2	SUGGESTED SOLUTIONS TO PRACTICE QUESTIONS



Overview of the Chapter:

- ☐ This chapter explains what is a Company and what are different types of companies discussed in Companies Act, 2017.
- ☐ Further, this chapter discusses different Authorities governing a company, and process of registration of a company.

Examinability of the Chapter: ***(considering latest syllabus and testing by ICAP)***

Although, examiner may ask question from any topic in any way. However, based on my past experience:

- Both types of questions may be asked from this chapter i.e. question of reproduction as well as a simple case study.
- 3 – 4 marks' question is expected from this chapter in exam.

In-depth analysis of examinability with particular reference to ***Spring 2024 attempt*** *will be explained in class.*

LO 1: THE FEATURES OF A COMPANY:

What is a Company:

Company means an organization which is registered under Company law.

What is Company Law:

Company law **includes:**

- repealed Companies Act 1913,
- repealed Companies Ordinance 1984 and 2016, and
- Companies Act 2017.

Features of a Company: *(as compared to Sole-proprietorship and Partnership)*

1. A company is an Artificial legal person:

- ☐ A company is considered by law as an ***artificial person*** having separate legal status from its owners.
- ☐ This concept is called ***"Doctrine of Corporate Personality"***.

Consequences of Separate Legal Status:

1. A company can contract with its own name.
2. A company owns its assets, and is fully liable to pay its debts. [Debtors owe money to company, and not to its owners]
3. Liability of members is limited.
4. Separation of ownership from management.
5. Transfer of ownership and perpetual succession

2. Separation of ownership from management:

In a company, persons who manage the business *(called directors)* are usually different from persons who own the business *(called members or shareholders)*.

> **Study Tip – Owners and Managers**
> Owner can be a ***natural person*** (e.g. an individual), or an ***artificial person*** (e.g. a company may own shares in another company). However, only a ***natural person*** can manage the business.

3. A Company has Shares and Share Capital:

- ☐ Total investment in a company (called **share capital**) is subdivided into various smaller parts (called **shares**).
- ☐ Each share has a **face/nominal value** (e.g. if total capital of a company is Ten Million Rupees; it may be divided into 1 million shares of Rs. 10 each or 100,000 shares of Rs. 100 each).
- ☐ If a person invests in a company, company issues him shares of equivalent amount as proof of his investment.

A share has following characteristics:

1. Shares have some **rights** (e.g. right to receive dividend, right to attend general meeting, voting rights).
2. Shares are **transferable**. Shareholders can transfer some or all of their shares to another person (through sale, gift and inheritance).

> **Voting Rights**
> **"Voting Right"** means right of a member to vote on a matter in general meeting, **either** present in person **or** through video-link **or** by proxy **or** by means of postal ballot.

4. Limited Liability of Members/Shareholders:

Concept of limited liability applies to shareholders, and not to company. A company is fully liable for all debts. However, liability of members is:

- ☐ limited upto **unpaid** amount on **face value** of shares (in case of company Limited by Shares) **or**
- ☐ limited upto the amount each members **guarantees** to contribute at time of winding up of company (in case of company Limited by Guarantee).

Word **"Limited"** is added at the end of name of a company to warn creditors that liability of its members is limited.

5. Legal Obligations:

- ☐ If a company breaks the law or agreement, it is company itself which is liable.
- ☐ Directors and officers of company are not liable unless they exceed their powers.

6. Liability to pay tax

- ☐ A company is liable to pay tax on its income/profits.

7. Perpetual Succession (or perpetual existence):

- ☐ Perpetual succession means a company, being an artificial/legal person, does not die. It continues even if its owners change or die (as opposed to partnership).
- ☐ A company is created by a process of law and is wound-up by a process of law.

<u>**Law and Governance of a company:**</u>

A company is governed by following laws:

1. **Companies Act, 2017**. (This is the law relating to creation and operations of companies)
2. **Memorandum of Association.** (This is constitutional document which focus on external stakeholders).
3. **Articles of Association** (These are by-laws which focus on internal affairs of company)

Q. 1 **PRACTICE QUESTIONS**

Mr. Zahid set up a company , ABC (SMC – Private) Limited, and owns 100% shares of it. The company goes into liquidation with assets amounting Rs. 8 million and liabilities amounting Rs. 10 million.
Is Mr. Zahid personally liable to pay Rs. 2 million to creditors? Why or why not?

(ICAP Book: Chapter 1 – Example # 01)

Exceptions are always part of the definations.

LO 2: DEFINITION AND TYPES OF COMPANIES:

Body Corporate or Corporation: Any organisation which have seprate legal status

Definition of Body Corporate is broader than Company.

Body corporate or corporation **includes:**

(a) A company incorporated in **Pakistan,** under **Company Law.**

(b) A company incorporated **outside Pakistan** registered in foreign countries.

(c) A body corporate declared as body corporate **under relevant statute** (e.g. State Bank of Pakistan). organisation (google)

However, following are **NOT** considered Body Corporate:

- a **co-operative society** registered under any law relating to co-operative societies, **or**
- any **statutory body** which Federal Government specifies by notification.

Foreign Company:

Foreign company means a company incorporated **outside Pakistan,** which:

- conducts any **business activity** in Pakistan, **or** (KFC) UBER
- has a **place of business** or liaison office in Pakistan (whether itself or through agent, whether physically or electronically).

Types of Companies under Companies Act 2017:

Types on the basis of **Status:**

1. Private Company (Single Member Company, and Other than SMC)
2. Public Company (Listed Company, and Unlisted Company)

Types on the basis of **Liability:**

3. Limited by Shares
4. Limited by Guarantee
5. Unlimited Company

Securities → Share, debenture

Examples of **Other companies:**

6. Holding Company and Subsidiary Company
7. Association not for profit

Private Company:

Private Company means a company which, **by its articles:**

1. Limits **maximum** number of its members to be **50** excluding employees *(joint-holders are considered as 1 member).*
2. **Restricts** right to **transfer** its shares, and
3. **Prohibits invitation** to general public to subscribe for shares (or debentures or other redeemable capital) of the company.

A private company can be:

- **Single Member Company (SMC):**
  It has only **one** member. It has to add words "(SMC – Private) Limited" at the end of its name.

- **Other than SMC:**
  It has atleast **two** members. It has to add word "(Private) Limited" at the end of its name.

Every shareholder is member but every member is not share holder

Single Member Company (SMC)
This is a company which is registered with only **one member**, who is **also the director** of the company.

Member of SMC shall **nominate** a person who shall be responsible for following in case of **death** of member:

- Manage the affairs of company as **trustee**, and
- Transfer the shares of deceased member to his **legal heirs** as per law.

If shares are transferred to **more than one legal heirs**, such company shall **cease** to be an SMC and shall **convert** itself into a private company.

Public Company:
Public Company means a company which is **NOT** a private company. A public company has to add word "Limited" at the end of its name.

A public company can be:

- **Listed Company:**
  A public company whose **securities** are listed, and are traded on stock exchange. Such company has **issued** securities to general public.

- **Unlisted Company:**
  A public company whose securities are **NOT** listed or traded on stock exchange. Such company has **not issued** its securities to general public, although **it can offer securities** to general public after registering on stock exchange.

Company Limited by Shares:

- ❑ This is a company in which liability of members is limited by the memorandum upto **unpaid amount** (if any) on face value of share they acquired.

  For example:
  - If shares are **partly paid**, members are liable to pay unpaid amount to company.
  - If shares are **fully paid**, members are not liable to pay any amount to company.

- ❑ This company can raise additional capital by issuing new shares.

Company Limited by Guarantee:

- ❑ This is a company in which liability of members is limited by the memorandum to such amount as members **agree to contribute** to the assets of company **at time of winding up**.
- ❑ If a person **ceases** to be a member, he is also liable to contribute within **one year** afterwards, for the debts contracted before he ceased to be a member.
- ❑ Such companies **may have or may not have share capital**. If such company has share capital, liability of its members shall also include the amount unpaid on shares.
- ❑ A company limited by guarantee has to include **word "(Guarantee) Limited"** in its name.
- ❑ **Examples** include: Charities, Trade Associations, Sports Clubs.

Unlimited company:

- ❑ Liability of members in such type of company is unlimited.
- ❑ Such companies are rare in practice, and are used by **partnership-style business**.

Study Tip - Public Sector Company

Public sector company means a company:

- Whose **more than one-half voting securities** are held by Govt. or any agency of Govt, or
- Govt or any of its agency has power to appoint **majority of its directors.**

It also **includes** a public sector association not for profit, licensed by Commission. However, nomination of directors by Commission on board of securities exchange or any other entity shall not make it a public sector company.

Holding Company:

A company will be a holding company of other company if:

- ☐ it **controls more than one-half voting securities** of other company, either by itself or together with one or more of its subsidiary companies; or
- ☐ it **controls composition of board** of other company. Composition of board is controlled when a company can appoint or remove all or majority of directors of other company.

Subsidiary Company:

A company will be a subsidiary company of other company if:

- ☐ Other company controls more than one-half of its voting securities, either by itself or together with one or more of its subsidiary companies; or
- ☐ Other company controls its composition of board. Composition of board is controlled when a company can appoint or remove all or majority of directors of other company.

However, holding companies shall not have layers of subsidiaries beyond such numbers as may be notified.

Study Tip

Securities
Securities means instruments used to raise capital. It includes **Shares** (i.e. voting securities/equity) and **Debentures** (i.e. non-voting securities/debt).

Wholly Owned Subsidiary
If a company owns **100% shares** of another company, that other company is called wholly owned subsidiary.

Minimum and Maximum Number of Members:

Mode/Type of Company	Minimum Number of Members	Maximum Number of Members
Single Member Company	1	1
Private Company (other than SMC)	2	50
Public unlisted company	3	No limit
Public listed company	7	No limit

If a company carries on a business with **less than minimum number** for more than **180 days**, every **member** who knows this fact, shall be **personally liable** for debts of the company contracted after 180 days.

PRACTICE QUESTIONS

Q.2
Masters Limited (ML) has made equity investment in Abbas Limited (AL). In the light of Companies Act, 2017 state under what circumstances ML may classify AL as its subsidiary. **(04)**

(ICAP, CAF 07 Level – Spring 2019 , Q.# 9a)
(ICAP Book: Chapter 1 – Practice Question # 04)

Q.3
Under the provisions of the Companies Act, 2017 explain the term 'body corporate or corporation'. **(04)**

(ICAP, CAF 07 Level – Spring 2018, Q.# 6b)
(ICAP Book: Chapter 1 – Practice Question # 01)

Q. 4
Mention the status of following organizations i.e. whether company, body corporate, both or none?
(i) Orange Limited is a company incorporated in Pakistan and is operating branch offices around the globe.
(ii) Orange Inc. is a company incorporated in USA and is operating a branch office in Pakistan.
(iii) XYZ Housing Cooperative society registered as body corporate under laws related to cooperative societies.
(iv) Orange Inc. is a company incorporated in USA and is operating a branch office in Pakistan. The concerned minister of Federal Government notified that Orange Inc. shall not be considered a body corporate for the purposes of Companies Act, 2017.
(v) Orange Inc. is a company incorporated in USA and is operating a branch office (a place of business) in Pakistan.
(ICAP Book: Chapter 1 – Example # 03, 04, 05, 06, 07)

Q. 5
(a) The securities of Engro Fertilizers Limited are allowed to be traded on Pakistan Stock Exchange (PSX) i.e. people can buy and sell those securities using the mechanism provided by PSX. What is the type of this company?
(b) Pak Arab Refinery Company Limited (PARCO), a joint venture between Government of Pakistan and the Emirate of Abu Dhabi was incorporated as a public limited company in 1974. The Government of Pakistan holds 60% of the shareholding while 40% of the shares are held by Emirate of Abu Dhabi. What is the type of this company?
(c) XYZ Limited is a public company registered under Companies Act, 2017 and also listed on Pakistan Stock Exchange. The Government has no direct or indirect investment in this company. What is the type of this company?
(d) ABC Limited owns 100% shares of XYZ Limited.
(ICAP Book: Chapter 1 – Example # 08, 09, 10, 12)

Q. 6
Hill Limited owns 40% voting securities in Stone Limited only but has the power to appoint or elect the majority of directors due to a contractual arrangements with other shareholders. Stone Limited holds 80% voting securities in Stylish Stones Limited.
Explain their relationships with each other under Companies Act 2017.
(ICAP Book: Chapter 1 - Example # 11)

Q. 7
Kaghan Resham Limited" (KRL) holds 60 percent shares out of total paid up capital of another public company named "Narran Silk Limited" (NSL). NSL further owns 14 percent shares of "Thandiyani Ice-creams Limited" (TIL). NSL has also entered into an agreement with other shareholders of TIL to appoint four out of seven directors on the board of directors of TIL.
Explain their relationships with each other under Companies Act 2017.
(ICAP Book: Chapter 1 – Practice Question # 03)

Q. 8
Mount Everest Limited is a company limited by shares. It has issued 1,000,000 shares with nominal value (or face value) of Rs. 100 each. Company goes bankrupt in 2019.
Is Mr. D (a person holding 125,000 shares) liable to pay any debt of company in following cases:
(i) Shares are fully paid.
(ii) Shares are paid only for Rs. 80 per share, remaining amount is unpaid.

Q. 9
(ICAP Book: Chapter 1 – Example # 02, amended)
Raheel and his father, Rashid are only members in RR (Private) Limited. Upon death of Rashid, all the estate (including shares in RR (Private) Limited) were transferred to Raheel being the only heir on 25th April 2020. Raheel carried on business alone till 14th December 2020, when he transferred some of the shares to two of his family members. What are the legal consequences of this situation?

Q. 10
(ICAP Book: Chapter 1 – Example # 20)
A Secretary has recently joined ABC (Pvt) Ltd. She informed the CEO that the membership of the company has crossed the maximum number provided under the Companies Act, 2017. The data she shared with the CEO was:

Corporate members	14
Individuals	34
Joint share-holding (3,000,000 shares held by 4 members jointly)	4
Total	**52**

Under the relevant provisions contained in the Companies Act, 2017, suggest the course of action in the given scenario.
(ICAP Book: Chapter 1 – Practice Question # 02)

LO 3: AUTHORITIES, OFFICIALS, MEMBERS AND RESOLUTIONS:

The Registrar:

Definition:

"Registrar means a registrar, an additional registrar, an additional joint registrar, a joint registrar, a deputy registrar, an assistant registrar or such other officer as may be designated by SECP, performing duties and functions under this Act"

Powers and Duties of Registrar:

Registrar has various powers and duties under the Act e.g. to register companies, to receive documents from company, keeps record of mortgages of companies, to inspect books and seize books (if necessary to reach out certain facts).

The Commission: *(SECP)*

Definition:

The Commission means the Securities and Exchange Commission of Pakistan.

Organization and Offices:

- ☐ Head office of SECP is in Islamabad and
- ☐ It has 8 regional offices (called Company Registration Offices) i.e.
  - 1 in Islamabad,
  - 4 in each provincial capitals, and
  - 1 each in Multan, Faisalabad and Sukkur.

Powers and Functions:

SECP has functions/powers to regulate affairs of all the companies (including Insurance, Banking and other companies). SECP has powers and functions under Companies Act as well as under SECP Act.

Authorities within the Company:

Member:

Member includes:

1. **Subscribers** to the memorandum of association, who become members of the company on its registration.
2. A person who becomes **shareholder of any class** or kind of shares in the company, and whose name is entered in the register of members (for company having share capital).
3. A person who **agrees** to become a member of the company, and whose name is entered in the register of members (for company NOT having share capital).

> **Study Tip- Shareholder Vs. Member**
> Shareholder means a person who holds any class or kind of shares in the company.

Board:

It means Board of Directors of company.

Officer:

It includes any Director, Chief Executive, Chief Financial Officer, Company Secretary, Share Registrar or other authorized officer of the company.

Resolution:

Definition:

Resolution is a decision reached by majority of the members.

Types:

There are two types of resolutions i.e. Ordinary Resolution and Special Resolution.

- ☐ **Ordinary Resolution:**

  Ordinary resolution means a resolution which is:
  - passed at a **general meeting**
  - by a **simple majority** of members who are entitled to vote and
  - are **present** in person or by **proxy**, or through **postal ballot** (as provided in the articles or as may be specified) at a general meeting.

- ☐ **Special Resolution:**

  Special resolution means a resolution which is:
  - passed at **general meeting** (for which notice has been given atleast **21 days before meeting** specifying proposed resolution)
  - by atleast **3/4th** majority of members who are entitled to vote and
  - are **present** in person or by **proxy**, or through **postal ballot** at general meeting.

  Exception: A special resolution may be passed by giving notice for less than 21 days, if all the members entitled to attend and vote at any such meeting so agree.

PRACTICE QUESTIONS

Q.11

Under the provisions of the Companies Act, 2017 discuss how a person may become a member of the company. **(03)**

(ICAP, CAF 07 Level – Autumn 2019, Q.# 6a)
(ICAP Book: Chapter 1 – Practice Question # 05)

Q.12

Under the provisions of the Companies Act, 2017 briefly describe the term 'Special resolution'. **(04)**

(ICAP, CAF 07 Level – Autumn 2018 Q.# 6a)
(ICAP Book: Chapter 1 – Practice Question # 06)

Q.13

Mention the status of following persons i.e. whether member or shareholder or both or none?
(a) Adeel is member of ABC (Guarantee) Limited which does not have share capital. Adeel has guaranteed to contribute an amount up to Rs. 1 million if needed in case of winding up of the company.
(b) Maria along with other members of her family subscribed a memorandum for registration of a company XYZ (Private) Limited. The company has been registered but shares certificates have not been printed and allotted yet.

(ICAP Book: Chapter 1 – Example # 13, 14)

LO 4: ASSOCIATION NOT FOR PROFIT U/S 42:

Conditions/Criteria for grant of license as "Associations Not for Profit":

Commission may grant license to a company (for a specified period) as "Association not for Profit" if it satisfies following conditions:

1. It is to be formed as a public limited company for **useful social objects** e.g. promoting science, arts, commerce, education, religion, sports, health, social welfare, charity or any other useful object.
2. It **prohibits** payment of **dividend** to its members.
3. It **applies** its **profit** and other income **in promoting** its **objects**.
4. Its **objects and activities** are **not against the laws**, and national interests of Pakistan.
5. Its **Memorandum and articles** shall be in accordance with **specified form** and approved by Commission.

Commission may also impose **additional conditions**, and such conditions shall be inserted in memorandum and/or articles of company.

Privileges and Obligation of an associations not for profit:

On registration, such association shall enjoy all the privileges and obligations of a limited company. However, it does **not** have to add **words "Limited" or "(Guarantee) Limited"** in its name.

Revocation of license:

License granted to "Association not for profit" may be revoked anytime in writing by Commission:

1. If management has **failed to comply** with **terms and conditions** subject to which a license is granted, or
2. If affairs of the company are **against public interest**, or
3. If company has **failed to file** with **Registrar** its **financial statements or annual return** for **2 consecutive years**, or
4. If company has acted **against the laws**, and national interests of Pakistan, or
5. Number of **members** is **reduced below 3**, or
6. If:
   a. company has conducted **unlawful or fraudulent activities**, or
   b. its management **fails to maintain proper accounts**, or **commits fraud**, or
   c. Its management is involved in **terrorist financing** or **money laundering**, or
   d. Management **refuses to act** according to requirements of **Memorandum** or **Articles** or **Companies Act**, or **Directions** of **Registrar** and **Commission**, or
   e. Company is not carrying on its business or is not in operation for one year, or
7. If it is **just and equitable** to revoke license.

However, before revocation, **Commission** shall:

1. give written **notice** to company of its intention to do so, and
2. provide an opportunity of being **heard**.

Effect of revocation of license:

Requirements to be completed by company on revocation:

If license of the association is revoked by Commission:

1. Company shall **stop all** of its **operations except recovery** of amounts receivable, if any.
2. Company shall **not** ask or receive **donation** from any source.
3. Within **90 days from** revocation of license (or such extended period as may be allowed by the Commission), all the **assets** of the company shall be **transferred** to another company (after payment of liabilities) which is registered as associated not for profit, preferably with similar objects.
   However, company can **retain reasonable expenses for voluntary winding up** of company **or** making application to Registrar for removing its name from his records.

Report to Registrar:

After compliance with the above requirements, company shall file a report to Registrar within **15 days** which shall include specified information and documents.

Proceedings for Winding up:

Within **30 days** of acceptance **of** the **report** by Registrar, board of directors shall start proceedings for **voluntary winding up** of company, or making application to Registrar for removing its name from his records.

Appointment of Administrator:

If company fails to meet any of the above requirements within the specified or extended period (if allowed), **Commission** may:

- appoint an **Administrator** to manage affairs of the company, and
- initiate necessary proceedings for **winding up** of the company.

Restrictions on members and officers:

If, due to revocation of license, net assets of a company are transferred to another company, **members and officers** (or their family members) of the first company shall **not hold any office** in the later company for **5 years** from the date of transfer of assets.

PRACTICE QUESTIONS

Q. 14

Alfalah Associates is an association of persons. It wants to register itself as a limited company but does not wish to include the word "Limited" in its name.

In view of the provisions of the Companies Act, 2017 you are required to explain the conditions that need to be satisfied before the Commission may issue it a licence and allow it to dispense with the word "Limited" from its name. **(05)**

(ICAP, CAF 07 Level – Spring 2011 Q.# 5a)

(ICAP Book: Chapter 1 – Practice Question # 07)

Q. 15

The licence of Cancer Research Association (CRA), issued under section 42 of the Companies Act, 2017, was revoked by the Commission as the affairs of CRA were conducted in a manner prejudicial to public interest.

Under the Companies Act, 2017 briefly discuss the effect of revocation of licence on CRA, its members and officers. **(05)**

(ICAP, CAF 07 Level – Spring 2020, Q.# 7a)

(ICAP Book: Chapter 1 – Practice Question # 08)

Q. 16

M/s Shareer General Hospital (SGH) is a company registered as association not for profit. Commission revoked SGH licence on 13th January 2020 and ordered transfer of all its assets by 11th April 2020. SGH management transferred all the assets to Good Eye Hospital (GEH), another association not for profit, on 3rd April 2020.

Required:

Specify the period for which members and officers of SGH will not be eligible to hold any office in GEH.

(ICAP Book: Chapter 1 – Example # 15)

LO 5: INCORPORATION (REGISTRATION) OF A COMPANY:

Obligation to register as a company:

- Every partnership or association of person which consists of **more than 20 persons** and is formed for the purpose of gain, is required to be registered as a company.
- In case of **non-compliance**:
  - a penalty of level 1 will be imposed, and
  - person shall be personally liable for liabilities of the business.

Exceptions:

Obligation to register as a company does not apply on following:

1. **A partnership of lawyers, accountants** or other profession who are not allowed by law to practice as a limited liability company (e.g. CA Firms).
2. A society, body or association of persons **incorporated under any law in Pakistan.**
3. **Joint family** carrying on joint family business.
4. **Partnership** of two or more **joint families** where total number of members (excluding minors) do not exceed 20.

Steps in Process of Registration:

1. **Application for Reservation of Name:**
   - **Promoters** make application (in specified form and manner with a specified fee) to **Registrar** to reserve a name for proposed company. Name is reserved for a period not exceeding **60 days.**
   - If **registrar refuses** to reserve the name, an appeal can be filed to Commission within **30 days** of the refusal. Order of Commission shall be **final.**
   - If name is reserved by furnishing **incorrect information**, such reservation will be cancelled and company will have to change its name if registered. Applicant will be liable to a penalty.

> **Points to Note:**
> - **Promoters** are the person who are desirous of forming a company, and takes necessary steps for its registration.
> - Reservation of Name is not required if word "Private" is to be added/removed in name.

2. **Filing with Registrar:**

   An application (on specified form) is filed with Registrar alongwith following information/documents:
   - **Memorandum** of Association signed by subscribers, duly witnessed and dated.
   - **Articles** of Association signed by subscribers duly witnessed and dated (optional for company limited by shares)
   - **Declaration** of compliance with requirements of Companies Act 2017 regarding incorporation.
   - **Address** for correspondence is notified (till Registered Office is established).

3. **Approval of Memorandum by Registrar:**
   - If registrar is satisfied that all requirements of Companies Act 2017 have been met and documents are valid, he shall register the memorandum and other documents, and shall issue **"Certificate of Incorporation"**. This certificate shall be signed/authenticated by Registrar.

- Certificate of incorporation is the conclusive evidence of incorporation of company and includes:
  - name of company,
  - registration number,
  - date of incorporation,
  - status (public or private) and
  - liability of company (limited by share, limited by guarantee or unlimited).

Refusal of Registration and Options available to Promoters:

Grounds of Refusal:

Registrar may refuse to register a company if:

- any document is defective (e.g. there is error, omission or not properly authenticated) or
- does not comply with requirements of law.

Options Available to Subscribers:

1. Subscribers may **remove deficiency** in documents and may file revised documents within prescribed time, or
2. Subscribers may **file** an **appeal to Commission** in writing within **30 days** of refusal by Registrar. Decision of Commission on this matter shall be **final** and an appeal cannot be filed against such decision.

Effect of "Registration" of Memorandum & Articles: **(or Effect of Incorporation)**

When Registrar registers memorandum and issues certificate of incorporation, it has following effects:

1. A **body corporate** has been **formed** with name stated in certificate of incorporation.
2. The body corporate can perform all **functions** of an incorporated company i.e. **separate legal status, perpetual succession** and having its own **common seal.**
3. Company shall have same **Status** and **Registered office** as **mentioned in the application** for registration.
4. **Subscribers become members** with limited liability, and also become liable to acquire initial shares (if company is limited by shares).
5. Persons named as **proposed director** in articles, are deemed to have been **appointed as director.**

Study Tip: Pre-incorporation Contracts

A company **cannot** be held **liable** for pre-incorporation contracts, because company did not exist at time of contract. Promoters are personally liable for those contracts.

Q.17 **PRACTICE QUESTIONS**

The Registrar, after registering the memorandum and articles of association, has issued the certificate of incorporation to Shahbaz Limited, a company with an authorized share capital of Rs. 300 million. Under the Companies Act, 2017 briefly describe the effects of such registration.

(05)

(ICAP, CAF 07 Level – Autumn 2019, Q.# 6b)
(ICAP Book: Chapter 1 – Practice Question # 11)

Q.18
On 29 April 2012, a memorandum of association of AB Limited was filed for registration in the office of Registrar. However, on 25 May 2012, a letter from the registrar office was received by the subscribers to the memorandum in which the registration was refused on the ground that the objects stated in the memorandum were inappropriate.
Describe what course of action is available to AB Limited in the above situation, according to the Companies Act, 2017.

(ICAP, CFAP 02 Level – Summer 2012, Q.# 1)
(ICAP Book: Chapter 1 – Practice Question # 10)

Q.19
Identify which of the following organizations are required to be registered as a company under Companies Act, 2017?
(a) In an MBA class, 28 class fellows decided to form a partnership firm to work collectively as marketing and advertisement advisors.
(b) A group of 130 persons formed a housing co-operative society in Multan and got it registered under the Cooperative Societies Act, 1925.
(c) A registered Hindu Undivided Family of 37 members is carrying on joint family business.
(d) After qualifying CA, 28 Chartered Accountants decided to form a partnership firm to work collectively as Chartered Accountants. The Chartered Accountants Ordinance, 1961 prohibits to practice as Chartered Accountants with limited liability.

(ICAP Book: Chapter 1 – Example # 16, 17, 18, 19)

APX 1: OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT):

Select the most appropriate answer from the options available for each of the following Multiple Choice Questions. Each MCQ carries ONE mark. These questions are adapted from ICAP's Study Text.

1.* Which type of business structure is created by a process of incorporation
(a) Sole Proprietor
(b) Partnership
(c) Company
(d) None of the above

.* Body corporate or corporation includes
(a) A company incorporated under Companies Act, 2017 or company law
(b) A company incorporated outside Pakistan
(c) A body corporate declared as body corporate under relevant statute
(d) All of the above

"Men may come and men may go but the company exists". This explains which characteristics of the company as per the Companies Act, 2017.
(a) Separate legal entity
(b) Perpetual Succession
(c) Perpetual Liability
(d) Capacity to Sue

What is separate legal personality
(a) That the members in general meeting are regarded by law as a person.
(b) That the board of directors is regarded by law as a person
(c) That the company as an entity is regarded by law as a person
(d) That the managing director of the company is regarded by law as a person.

The effects of incorporation are
(a) Limited liability of the owners of the business
(b) Separation of ownership form control
(c) Transfer of ownership and perpetual succession.
(d) All of the above

The concept of limited liability applies to
(a) The directors of the company
(b) To the creditors of the company
(c) To the owners (Shareholders) of the company
(d) To the Bankers of the company

If a limited company is unable to pay its debts, it may be forced into liquidations. The assets of the company will then be used to pay some of its unpaid liabilities and
(a) The directors will be required to pay personally remaining unpaid debts of the company
(b) The shareholders will be required to pay personally remaining unpaid debts of the company
(c) The debenture holders will be required to pay personally remaining unpaid debts of the company
(d) The shareholders will not be required to pay personally remaining unpaid debts of the company

.* Limited liability applies to
(a) All companies
(b) All public companies
(c) All limited companies
(d) All unlimited companies

The directors and other officers of the company act on behalf of the company, and provided that they act within their powers.
(a) They will be personally liable for the debts of the company
(b) They will not be personally liable for the debts of the company
(c) They along with the shareholders will be personally liable for the debts of the company
(d) They along with the other officers of the company will be personally liable for the debts of the company

Company law includes
(a) The Companies Act of 1913
(b) The Companies Act of 2017
(c) The Companies Ordinance of 1984
(d) All of the above

Public listed company means
(a) Such form of public company whose securities are listed on an exchange
(b) Such form of private company whose securities are listed on an exchange
(c) Such form of public company whose name of the members are listed on an exchange
(d) Such form of public company whose name of the directors are listed on an exchange

Private company other than single member company can be registered by
(a) At least2 members and it restricts the maximum number of members to fifty (50)
(b) At least 1member and it restricts the maximum numbers of members to twenty-five(25)
(c) At least 5 members and it restricts the maximum number of members to fifty (50)
(d) At least 1 member and it restricts the maximum numbers of members to fifty (50)

A company or body corporate which exercises or controls more than one-half of the voting securities of any other company or controls the composition of the board of such other company is known as
(a) Subsidiary company
(b) Co-operative company
(c) Holding company
(d) Listed company

License to association not for profit shall be granted by commission on the fulfilment of certain conditions. Choose the incorrect one.
(a) It shall apply its profit, if any in promoting its objects
(b) They can pay profits to its members out of it.
(c) The payments of any dividend to its members is prohibited
(d) They will work only for useful objects of the society

SECP has been vested with lot of powers under the Companies Act, 2017 and it has got powers to regulate the affairs of
(a) All the companies and insurance company
(b) Banking companies and modarabas
(c) Non-banking finance companies
(d) All of the above

Registration of company is actually the registration of its constitution i.e.
(a) Articles of association
(b) Memorandum of association
(c) Certificate of incorporation
(d) Prospectus

Registration of memorandum and articles means the registration of the company. The registrar after registering the company, shall issue a certificate of incorporation, which shall state.
(a) CNIC number of the directors
(b) Date of birth of CEO
(c) Date of incorporation
(d) Address of the directors

Q.5

(a) Engro Fertilizers Limited is a listed company.
(b) PARCO is a public sector company.
(c) XYZ Limited is a public company but not a public sector company. It is also a listed company.
(d) XYZ Limited shall be deemed to be wholly owned subsidiary of ABC Limited.

Q.6

Hill Limited is Holding company of Stone Limited, because it has power to appoint majority of its directors.
Stone Limited is a holding company of Stylish Stones Limited because it holds more than 50% voting securities of Stylish Stones Limited.
Hill Limited is also a holding company of Stylish Stones Limited because it is holding of Stylish's holding company.

Q.7

Relationship between KRL and NSL:
KRL is the holding company of NSL because it owns more than 50% voting securities of NSL

Relationship between NSL and TIL:
NSL is the holding company of TIL because it controls the composition of board of TIL.

Relationship between TIL and KRL:
KRL is also the holding of TIL because it indirectly controls TIL through NSL.

Q.8

Legal Provision:
A company has a separate legal person from its owners. Liability of its members is limited upto amount unpaid on shar held by them.

Decision and Basis of Decision:
(i) Mr. D is not liable to pay anything.
(ii) If shares are partly paid, holder of 1 share is liable to pay upto unpaid amount i.e. Rs. 20 per share. Therefore, Mr. D ca be liable to pay Rs. 2,500,000 (125,000 * 20).

Q.9

Raheel shall be personally liable for the debts of the company contracted during the time from 22 October 2020 (*i.e. 18* days from 25th April) to 14th December 2020 when the company carried on business with fewer than two members.

Q.10

Relevant Legal Provision:
A private company limits maximum number of its members to be 50 (joint-holders are considered as 1 member).

Decision and Basis of Decision:
ABC is a private company. As number of members do not exceed 50 (i.e. 14 + 34 + 1 = 49), therefore, no action is require

Note for students: If number of members exceed 50, company will have to convert itself into public company.

Q.11

Member includes:

1. Subscribers to the memorandum of association, who become members of the company on its registration.
2. A person who becomes shareholder of any class or kind of shares in the company (if company has share capital)
3. A person who agrees to become a member of the company (if company does not have share capital).

, and whose name is entered in the register of members.

Examiners' Comments:

- *Examinees either ignored or forgot to write that subscriber to the memorandum becomes member only upon its registration Similarly, a person to whom shares are allotted becomes member only when his name is entered in the register of members.*
- *In some cases, examinees also stated that purchasing shares is the only way of becoming a member in a company.*

Marking Plan:

Up to 01 mark for stating each mode by which a person may become a member of the company	3.0 marks

Passing Percentage:
25%

Q.12
Special resolution means a resolution which is passed:
- by atleast **3/4th** majority of such members entitled to vote as are present (in person or by proxy or vote through postal ballot)
- at a general meeting for which atleast **21 days'** notice is given specifying proposed resolution. However, if all the members entitled to attend and vote at any such meeting so agree, a special resolution may be proposed and passed at a meeting for which less than 21 days' notice is given.

Examiners' Comments:
The performance in this part was satisfactory. However, some candidates instead of describing special resolution, listed down the items which require special resolution for its approval. Most of the candidates did not identify that votes on special resolution may also be casted through postal ballot.

Marking Plan:

Explanation of the term 'Special resolution'	4.0 marks

Q.13
(a) Adeel is member of ABC (Guarantee) Limited but not a shareholders in the company.
(b) Maria is member of the company but not a shareholder yet. She will become shareholder when share certificates are issued in her name.

Q.14
Commission may (by a license for a specified period) register a company as "Association not for Profit" if it satisfies following conditions:
1. It is to be formed as a limited company for useful social objects e.g. promoting science, arts, commerce, education, religion, sports, health, social welfare, charity or any other useful object.
2. It prohibits payment of dividend to its members.
3. It applies its profit and other income in promoting its objects.
4. Its objects and activities are not against the laws, and national interests of Pakistan.
5. Its Memorandum and articles shall be in accordance with specified form and approved by Commission.

Commission may also impose additional conditions, and such conditions shall be inserted in memorandum and/or articles of company.

Examiners' Comments:
Most of the candidates correctly described the conditions on the satisfaction of which Commission (SECP) may issue license to a company and allow it to dispense with the words "Limited" from its name. However, many students failed to mention that while issuing such license the commission may require the association (company) to fulfill certain conditions and regulations that shall be binding on the association (company) and the commission may also direct that such conditions and regulations be inserted in memorandum and articles of association.

Q. 15

Effect of revocation of license on CRA:

If license of the associate is revoked by Commission:

1. Company shall stop all of its operations except recovery of amounts receivable.
2. Company shall not ask or receive donation from any source.
3. Within 90 days of the revocation of license (or such extended period as may be allowed by the Commission), all the assets of the company shall be transferred to another company (after payment of liabilities) which is registered as associated not for profit, preferably with similar objects.
   However, company can retain reasonable expenses for winding up of company **or** making application to Registrar for removing its name from his records.

Effect of revocation of license on members and officers of CRA:

If, due to revocation of license, net assets of a company are transferred to another company, members and officers (or their family members) of the first company shall not hold any office in the later company for five years from date of transfer of assets.

Examiners' Comments:

- *Examinees did not know that the transfer of assets takes place only after paying-off the liabilities by the subject company.*
- *Only few examinees were aware of the fact that CRA can apply for extension to the Commission for transfer of its assets.*
- *Few examinees were not able to identify that funds may be retained to meet the expenses of voluntary winding up and making an application to the Registrar for striking the name of the company off the register.*
- *Examinees knew that members and officers of transferor organization will not be eligible to hold office in the transferee organization but did not mention the time period of five years.*
- *Some of the examinees erroneously mentioned steps related to company's winding up which were not required.*

Marking Plan:

Discussing the effects of revocation of license on CRA	3.5 marks
Discussing the effects of revocation of license on its members and officers	1.5 marks

Passing Percentage:
37%

Q. 16

The members and officers of SGH shall not be eligible to hold any office in GEH for a period of five years from date of transfer of assets ie. by 2nd April 2025.

Q.17

1. Subscribers (and subsequent members) become a body corporate with name stated in memorandum.
2. The body corporate is capable of exercising all the functions of an incorporated company i.e. separate legal status, perpetual succession and having its own common seal.
3. Status and registered office of the company are as stated in the application for registration.
4. Subscribers become members with limited liability.
5. Subscribers become holders of initial shares (if any).
6. Persons named as proposed director in articles, are deemed to have been appointed as director.

Examiners' Comments:

- *Most of the answers were incomplete as majority of the examinees covered only two or three points.*
- *Some of the examinees also discussed the provisions of obtaining certificate of commencement of business.*

Marking Plan:

Up to 01 mark for stating each effect after registration of the certificate of incorporation of Shahbaz Limited	5.0 marks

Passing Percentage:
25%

Q.18

1. Subscribers may remove deficiency in documents and may file revised documents within prescribed time, or
2. Subscribers may file an appeal to Commission within 30 days of refusal by Registrar.
Decision of Commission on this matter shall be final and an appeal cannot be filed against such decision.

Examiners' Comments:
The overall performance in the question was just average.
Many students filled pages by writing detailed procedure for alteration of object clauses of the memorandum of association by passing a special resolution, which was totally irrelevant because alteration can only be carried out after a memorandum has been registered. The options available were to remove the deficiency in the draft memorandum, which was rarely mentioned, or to file an appeal with the Securities and Exchange Commission of Pakistan. While discussing the option to appeal, most of the candidates did not specify that the decision of the Commission shall be final and cannot be challenged in any court or authority.

Q.19

(a) The carrying on business under such partnership shall be a punishable offence. They should form a company under Companies Act, 2017.
(b) They are not required to be registered under the company law.
(c) They are not required to be registered under the company law.
(d) Such partnership is allowed under the law, and is not required to be registered under the company law.

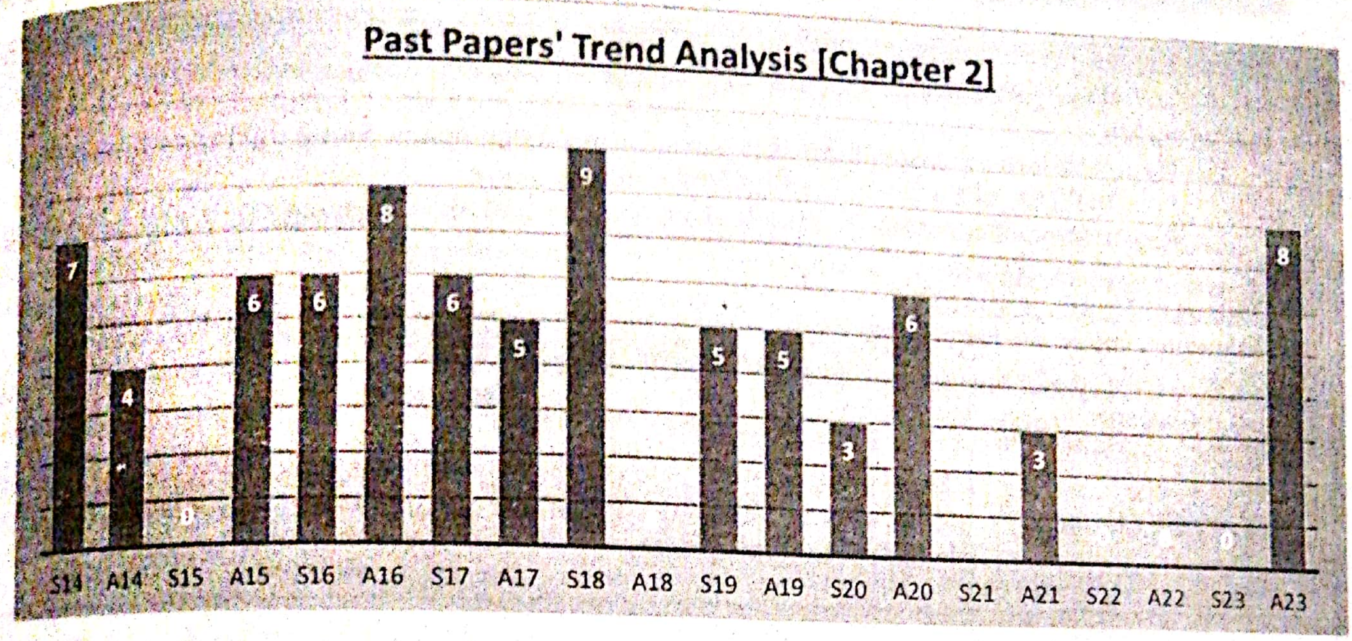
CHAPTER 02

MEMORANDUM AND ARTICLES

LO #	LEARNING OBJECTIVE	ICAP Book Reference	
		Chapter #	Paragraph #
PART 1 – MEMORANDUM OF ASSOCIATION			
LO 1	CLAUSES OF MEMORANDUM	2	Section 1
LO 2	NAME OF COMPANY	2	Section 2
LO 3	REGISTERED OFFICE AND PRINCIPAL LINE OF BUSINESS	2	Section 3
PART 2 – ARTICLES OF ASSOCIATION			
LO 4	ARTICLES OF ASSOCIATION	2	Section 4
LO 5	GENERAL PROVISIONS	2	Section 5

APPENDIX

APX 1	OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT)
APX 2	SUGGESTED SOLUTIONS TO PRACTICE QUESTIONS



<u>**Overview of the Chapter:**</u>

- Memorandum and Articles are two most important legal documents of a company. This chapter discusses Clauses of Memorandum in detail.
- This chapter also includes brief introduction of Articles. Clauses of Articles will be discussed in detail in next chapters.

<u>**Examinability of the Chapter:**</u> ***(considering latest syllabus and testing by ICAP)***

Although, examiner may ask question from any topic in any way. However, based on my past experience:

- Usually a question of reproduction is asked from this chapter, requiring to state procedures in case of alteration of a clause of memorandum. Sometimes, a simple case study is also asked.
- 4 – 5 marks' question is expected from this chapter in exam.

*In-depth analysis of examinability with particular reference to **Spring 2024 attempt** will be explained in class.*

PART 1 – MEMORANDUM OF ASSOCIATION

LO 1: CLAUSES OF MEMORANDUM:

Introduction:

- ☐ Memorandum of association is a constitution of company which **includes** Name, Place, Principal Line of Business, Liability and Capital clauses.
- ☐ Registration of company is actually the registration of memorandum.

Clauses of Memorandum:

Following clauses are required to be included in the memorandum of every company:

Clause	Explanation
1. Name Clause	This clause contains the name of the company, including words "Limited" or "(Private) Limited" or "(Guarantee) Limited" or "(Unlimited)" or "(SMC-Private)" as appropriate.
2. Registered Office Clause (or Place clause)	This clause shall state: ▪ Province (e.g. Sindh) or ▪ part of Pakistan not forming part of a province (e.g. Islamabad) , in which registered office of the company is to be situated.
3. Principal Line of Business Clause	▪ This clause shall state company's principal line of business. A company can engage in any business activity except those which are prohibited, or restricted (i.e. require approval). ▪ It shall always match with the name of the company. However, existing companies shall continue with their existing memorandum.
4. Liability Clause	▪ This clause shall state liabilities of members i.e. whether the liability of members is limited by shares, limited by guarantee, or unlimited. ▪ In case of company limited by guarantee, this clause shall also state liability of each member which he agrees to contribute at time of winding up.
5. Authorized Capital Clause (for companies limited by share, or limited by guarantee having share capital)	▪ If a company has a share capital, this clause shall state maximum amount of share capital which can be issued. ▪ This clause shall also state division of authorized share capital into shares of fixed nominal value. ▪ In the same clause, every subscriber shall agree to take atleast one share. Each subscriber writes opposite to his name total number of shares he has agreed to take.
6. Undertaking or Subscription Clause	▪ The company shall add an undertaking as may be specified by the SECP. ▪ All subscribers also undertake to form company, to comply with clauses of memorandum, and to take shares in the company.

Printing and Signature of Memorandum:

- Memorandum shall be in printed form, divided into sequentially numbered paragraphs, and shall be dated.
- Subscribers shall **sign** the Memorandum, and shall include their names, occupation, nationality, residential addresses and such other particulars as may be prescribed. A witness shall attest the signature, and shall mention his particulars similarly.

Borrowing Power of Company:

Memorandum and Articles of a company are deemed *(i.e. implied or assumed)* to include power to borrow money, and to issue other securities not based on interest.

PRACTICE QUESTIONS

Q.1

What will company write in registered offices clause of its memorandum in following situations:
(a) If the company proposes to have a registered office in Lahore
(b) If the company proposes to have a registered office in Islamabad

(ICAP Book: Chapter 2 – Example # 01)

Q.2

A proposed company's principal line of business is manufacture and sale of textile products. One of the subscriber to memorandum has suggested name "TSF Consultancy Limited".
Comment on this suggestion.

(ICAP Book: Chapter 2 – Example # 03)

Q.3

What are the main clauses of a Memorandum of Association of a company limited by guarantee and not having a share capital?

(ICAP Book: Chapter 2 – Practice Question # 01)

LO 2: NAME OF COMPANY:

Prohibition/Restriction of Certain Names:

A company shall **NOT** be registered with a name which contains such words which in the opinion of **Registrar,** are:

i. identical or closely resembles with an existing company.
ii. inappropriate, undesirable or deceptive
iii. selected to exploit or offend religious feelings of people.
iv. inappropriate on any other ground as may be specified.
v. prohibited, or restricted (i.e. require prior approval of Commission).

Exam Tip: Names which require prior approval of Commission

Approval of commission is required if proposed name of company contains words suggesting:

- Patronage with **Head of State** (whether Past or Present, Pakistani or Foreign).
- Connection with Federal **Govt.** or Provincial Govt. or any department, authority or statutory body of such Govt.
- Any connection with any **corporation** set up by or **under** any **Federal or Provincial law.**
- Patronage or Connection with **Foreign Govt.** or **international organization.**
- Establishing a **modaraba** management company or to float a modaraba.
- Any other **business requiring a license** from Govt.

Decision of Commission shall be **final** as to whether name of company is in violation of above provision or not.

Rectification/Change of name of Company:

Mode	Procedure
Rectification By Registrar	If a company is registered with a defective name: ▪ Registrar can issue orders to company to rectify its name (after giving opportunity of hearing), and ▪ Company will have to rectify its name within **30 days** of the order. If company fails to report compliance with registrar directions within specified period, Registrar: ▪ may select and enter a new name for the company in register, and ▪ shall issue a new *certificate of incorporation.*
Change By Company	A company can change its name after registration as follows: ▪ Company shall obtain written permission of Registrar to reserve new name and shall pass a Special Resolution. ▪ Company shall apply to Registrar (alongwith copy of special resolution and altered memorandum) to obtain approval. ▪ If approved, Registrar shall enter the name on the register in place of old name, and shall issue altered *certificate of incorporation* with new name. **Exception:** Approval of Registrar is not required if change is only the addition or deletion of words '(Private)' or (SMC-Private) or (Limited) or (Guarantee Limited) or (Unlimited) due to change in status of company.

Mentioning old name with new name:

After issuance of certificate of incorporation, company shall continue to mention its old name alongwith new name for **90 days**:
- outside of every office or place of business
- on every document or notice of the company.

Effect of change (or rectification) of name on rights and liabilities of company:

The change of name shall **NOT** affect:
- any rights or liabilities of the company, or
- any legal proceedings by or against the company.

Publication of Name:

1. **Name and Certificate on business place:**
   - Every company shall display name of company and incorporation number in English or Urdu outside **registered office**, and **every office or place of business** at prominent position.
   - Every company shall **display** a certified copy of certificate of incorporation at every place of business.
2. Name of company shall also be engraved on **seal** of the company, in English or Urdu.
3. Name, address of registered office, telephone, fax number, email and website address shall be mentioned on all **official documents or notices** of the company.

Penalty for non-publication of Names

- A penalty of Level 1 will be imposed if name is not displayed in the specified manner, or name is not engraved on seal or another seal is used for company.
- Further, if any document of company is issued without mentioning the legal name or seal of the company, issuer of such document (e.g. promissory note) shall be personally liable.

PRACTICE QUESTIONS

Q.4

Printing (Pvt.) Limited (PL) wants to change its name to Printing and Marketing (Pvt.) Limited.
Under the provisions of the Companies Act, 2017 describe the steps to be followed by PL for changing its name and matters to be complied with after the change of name.

(05)
(ICAP, CAF 07 Level – Spring 2018, Q.# 6a)
(ICAP Book: Chapter 2 – Practice Question # 03)

Q.4A

Comment whether a company can be registered with proposed names in following cases:
(a) A company named 'ABC Fertilisers Limited' is already registered, another company with the proposed name 'ABC Fertilizers Limited' (spellings are different).
(b) A proposed company with the name 'Spread Violence (Private) Limited'.
(c) A proposed business trading in industrial machinery with proposed name 'Industry Bank Limited'.
(d) A proposed company running bus transport services with the name 'Pakistan Bus Transport Authority Limited'

(ICAP Book: Chapter 2 – Example # 05, 06, 07, 08)

Q.4B

A group of persons intends to form a limited liability company, with the objective to provide research related services to pharmaceutical companies. In this respect, one of the promoters proposed 'Pharma Research Authority' as a name of the proposed company which was liked by all the promoters.
Under the provisions of the Companies Act, 2017 comment on the validity of the name proposed by the promoters and suggest how they can overcome the deficiencies, if any, in it.

(06)
(ICAP, CAF 07 Level – Autumn 2020, Q.# 7)
(ICAP Book: Chapter 2 – Practice Question # 02)

LO 3: REGISTERED OFFICE AND PRINCIPAL LINE OF BUSINESS:

Registered Office:

- ☐ Registered office is the address of company for receiving all of its communication.
- ☐ Every company shall **notify Registrar** the complete address of its registered office within **30 days of incorporation.**
- ☐ It may or may not be Head Office of the company.

Change in Registered Office:

A company can change its registered office:

1. From one place to another (within the same city).
2. From one city to another (within same province).
3. From one province to another.

1. Procedure for change within same city:

i. Company shall pass **Board Resolution.**
ii. Company shall notify Registrar within **15 days** after the date of change.

2. Procedure for change to different city (but within same province):

i. Company shall pass **Board Resolution.**
ii. Company shall pass **Special Resolution.**
iii. Company shall notify Registrar within **15 days.**
iv. **Physical record** of the company shall also be transferred to the **new registrar** (if registered office has been shifted to jurisdiction of another registrar).

3. Procedure for change to different province (i.e. change in Registered Office Clause):

i. Company shall pass **Board Resolution.**
ii. Company shall pass **Special Resolution** in general meeting.
iii. Application shall be filed with **Commission** to obtain **confirmation**. Commission shall consider rights and interest of members as well as creditors, and can make order on such terms and conditions as it thinks proper.
iv. A **copy of the order** (confirming the alteration duly certified by an authorised officer of the Commission) shall be sent **to Company** and **Registrar** within **07 days** of the order.
v. Company shall **file** with **Registrar** a copy of altered memorandum of association within **30 days** of the order of Commission. However, **Commission** may **extend** the **time** for filing of memorandum on sufficient cause shown.
vi. **Registrar** shall register the same, and shall issue a **certificate** which shall be conclusive evidence that all requirements of Act have been complied with.
vii. **Physical record** of the company shall also be transferred to the registrar in whose jurisdiction the registered office of the company has been shifted.

<u>Principal line of business:</u>

Principal line of business means the business in which company's:

- substantial **assets** are held (or likely to be held), or
- substantial **revenue** is earned (or likely to be earned)

, whichever is **higher.**"

<u>Change in Principal line of business clause:</u>

To change Principal line of business clause, following procedure is followed:

1. Company shall pass **Special Resolution** in general meeting.
2. Within **30 days** of special resolution, company shall file amended memorandum to registrar.
3. Registrar shall register the alteration. **If** change in principal line of business is **not in line with name** of the company, Registrar may order the company to change the name also.

Approval from Commission is **NOT** required to change principal line of business clause.

<u>Adoption of Business Activity subject to approval under any law:</u>

Same procedures will be followed as **described above** in "Change in Registered Office Clause" (step # i to vi) i.e.

1. Company shall pass Board Resolution.
2. Company shall pass Special Resolution in general meeting.
3. Application shall be filed with Commission to obtain confirmation. Commission shall consider rights and interest of members as well as creditors, and can make order on such terms and conditions as it thinks proper.
4. A copy of the order (confirming the alteration duly certified by an authorised officer of the Commission) shall be sent to Company and Registrar within 07 days of the order.
5. Company shall file with Registrar a copy of altered memorandum of association within 30 days of the order of Commission. However, Commission may extend the time for filing of memorandum on sufficient cause shown.

6. Registrar shall register the same, and shall issue a certificate which shall be conclusive evidence that all requirements of Act have been complied with.

PRACTICE QUESTIONS

Q.5
The Directors of Muntaqil Limited are considering to re-locate company's registered office from Karachi to Islamabad to carry on business more economically.
Advise Company Secretary about the steps which must be taken to re-locate the registered office under the provisions of the Companies Act, 2017. **(06)**
(ICAP, CAF 07 Level – Spring 2016, Q.# 6b)
(ICAP Book: Chapter 2 – Practice Question # 05)

Q.6
Describe the provisions contained in the Companies Act, 2017 relating to 'principal line of business' of a company. **(05)**
(ICAP, CAF 07 Level – Spring 2019 Q.# 9b)
(ICAP Book: Chapter 2 – Practice Question # 06)

Q.7
In the annual general meeting of Paramount Limited, a shareholder objected to the shifting of the registered office from Multan to Lahore without obtaining confirmation from the Commission. Explain whether the objection is valid. **(02)**
(ICAP, CAF 07 Level – Autumn 2011 Q.# 1b)
(ICAP Book: Chapter 2 – Practice Question # 04)

Q.8
TSF Mills Limited is being proposed to be registered to carry on business involving manufacture and sale of textile, sugar and flour products. The extracts from financial projection are:

Business	Estimated Assets		Estimated (Average) Revenue	
	Rs. m	%	Rs. m	%
Textile	500	55.6%	2,200	29.3%
Sugar	300	33.3%	4,500	60%
Flour	100	11.1%	800	10.7%
Total	***900***		***7,500***	

(ICAP Book: Chapter 2 – Example # 02)

PART 2- ARTICLES OF ASSOCIATION

LO 4: ARTICLES OF ASSOCIATION:

What is Articles of Association:

Articles contain rules and regulations on **internal affairs** of the company e.g. regulations regarding **minimum** number of directors, or rights and liabilities of various classes of shareholders.

*Articles may be **stricter** than the Companies Act, but **not vice-versa.***

Contents/Information of Articles – Table A:

Articles of a company shall be explicit, and without ambiguity. These include rules and regulations regarding following:

i. Business
ii. Transfer/Transmission of shares, and its Form
iii. Alteration of capital.
iv. Voting and other rights attached to different classes of shares, and other securities.
v. Notices and Proceedings of General meetings.
vi. Manners of Voting of members.
vii. Proxy Instrument.
viii. Number of directors, their powers and duties.
ix. Proceedings of directors' meeting.
x. Disqualification of directors and filling of vacancies.
xi. Minute books.
xii. Dividend, and Reserves.
xiii. Accounts.
xiv. The seal.
xv. Indemnity.
xvi. Winding up.

Exam Tip – Companies Act to override Memorandum/Articles

Companies Act, 2017 shall override articles of association of a company i.e. any provision in memorandum/articles/agreements etc shall be void if it violates Act e.g.

- Companies Act requires that **minimum number of directors** of an unlisted company will be three. A company can write in articles to have atleast 05 directors, but cannot write to have atleast 02 directors.
- Similarly, Act states situations for **disqualification of a director**. Articles may impose additional situations for disqualification but cannot reduce them.

Registration of Articles:

A company **limited by guarantee** and an **unlimited company** are required to register their Articles.

A company **limited by shares** has following options:

- It may **not register** its Articles, and may **adopt Table A** (in Companies Act, 2017) as its Articles, or
- It may **register** its own Articles. However, **Table A** shall **still apply** if Articles do not discuss a content mentioned in Table A.

Step-wise Procedures for Alteration in Articles:

1. Company shall pass **Special Resolution** to alter the articles.
2. If such alteration affects substantive rights or liabilities of members (or a class of members), such alteration shall be valid only if **3/4th majority** of affected class of members also vote for such alteration (either personally or through proxy).
3. Within **30 days of the resolution**, Company shall file with Registrar a copy of altered articles of association.
4. **Registrar** shall register the same.

Contents, Printing and Signature of Articles:

- Articles may include any or all of contents specified in **Table A** ***.
- Articles shall be in printed form, divided into sequentially numbered paragraphs, and shall be dated.
- Subscribers shall **sign** the articles, and shall include their names, occupation, nationality, residential addresses and such other particulars as may be prescribed. A witness shall attest the signature, and shall mention his particulars similarly.

**** Contents of Articles are described above at start of this LO.*

Penalty:

If a company violates the provision of its Articles, the company and every officer who defaulted shall be liable to penalty.

PRACTICE QUESTIONS

Q.9

The Companies Act requires that a public unlisted company shall have at least three directors. Can articles of a public unlisted company fix its number of directors to be:

(i) 2

(ii) 5

(ICAP Book: Chapter 2 – Example # 09)

Q.10

A team of young engineers is planning to incorporate a private limited company which would provide machine maintenance services to large companies. The company would initially be incorporated with a share capital of Rs. 20 million. However, the engineers are not certain about the registration and signing of articles of association.

Advise the team of engineers in respect of the above matters in the light of the Companies Act, 2017. **(03)**

(ICAP, CAF 07 Level – Spring 2020, Q.# 6a)

(ICAP Book: Chapter 2 – Practice Question # 08)

LO 5: GENERAL PROVISIONS:

Copies of Memorandum and Articles:

Any **member** of a company can request company to provide a copy of memorandum or articles, after paying **prescribed fee**. Company shall supply it to members within **14 days**.

Status/Effect of Memorandum & Articles:

1. Memorandum and Articles **bind the company and members** as if they have signed by members. Members have to observe memorandum, and articles unless in conflict with Companies Act.
2. All the **money payable** by a subscriber (as per his undertaking in memorandum) shall be a debt due to him which is payable in such **time** and **manner** as may be **notified by Commission.**

Any violation of above requirements shall be an offence liable to a penalty of level 1.

Effect of alteration in memorandum or articles:

An alteration in memorandum or articles to require a member to take more shares or increase his liability shall be valid only if:

- member agrees in writing
- either before or after the alteration is made.

Alteration to be noted in every copy:

- If an alteration is made in memorandum/articles, every copy issued thereafter will include that alteration.
- Otherwise, company and every officer who defaulted shall be liable to penalty of Level 1.

Form of Memorandum and Articles:

Type of Company	Relevant Table of First Schedule (where Memorandum/Article is available)
Company Limited by Shares	Table A (for Articles) and Table B (for Memorandum)
Company Limited by Guarantee, not having share capital	Table C
Company Limited by Guarantee, having share capital	Table D
Unlimited Company	Table E
Association not for profit	Table F

Point to Note:
"If Special Resolution is passed in any procedure, Company shall file a copy of special resolution to Registrar within 15 days."
Above point can be written in every case of passing of special resolution.

PRACTICE QUESTIONS

Q. 11

Mr. Zouk is an employee in a brokerage house and he wants to prepare some reports on request of some potential investors for a company named as "Arizona Grill Limited". For the preparation of the report he requires Memorandum & Articles of association of the company.
State whether he can obtain such copies of Memorandum & Articles of Association from "Arizona Grill Limited" and explain why?

(ICAP Book: Chapter 2 – Practice Question # 09)

Q. 12

Ahmed, Ahmer and Akbar being the founder members of M/s Excellent (Pvt) Limited (EPL) got the certificate of incorporation of the company on 1st March 2020. They have given the undertaking to subscribe 10,000 shares each of Rs. 10/- per share of the company. Discuss time period of payment by subscribers.

(ICAP Book: Chapter 2 – Practice Question # 10)

APX 1: OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT):

Select the most appropriate answer from the options available for each of the following Multiple Choice Questions. Each MCQ carries ONE mark. These questions are adapted from ICAP's Study Text.

1.* Under the Companies Act, 2017 in which document would you find the principal line of business clause?
(a) Statutory declarations
(b) Articles of association
(c) Memorandum of association
(d) Prospectus

2.* A person may make an application in specified form and manner with a specified fee to the registrar for reservation of any name. If the application is refused by registrar, aggrieved person may prefer an appeal to Commission with in
(a) 60 days
(b) 30 days
(c) 15 days
(d) 90 days

3.* Companies Act, 2017 allows the alteration of various clauses of the memorandum of association of the company however there is difference as to the procedure or requirement of law. Which clause cannot be altered in the lifetime of the company?
(a) Name clause
(b) Subscription clause
(c) Liability clause
(d) Registered office clause

4.* Toys & Toys Limited (TTL) resolved to shift its registered office from Gujranwala to Lahore i.e. within the province of Punjab. For this purpose, TTL must:
(a) obtain consent of creditors who are entitled to object and obtain prior approval of the Commission
(b) give notice of change to the Commission within a period of fifteen days after the change
(c) obtain approval of the registrar prior to shifting of its registered office
(d) give notice of change in situation of the registered office to the registrar within a period of fifteen days after the date of change

5.* For registered office clause the province or the part of Pakistan not forming part of a province shall be mentioned. e.g. if the company proposes to have a registered office in Islamabad, they will write in their memorandum that
(a) The registered office will be situated in province of Sindh
(b) The registered office will be situated in province of Punjab
(c) The registered office will be situated in Islamabad
(d) None of the above

6.* The first clause of the memorandum is the name clause of the company which contains the name of the company with the addition of appropriate parenthesis. Choose the incorrect parenthesis
(a) Abdullah (Private) Limited is a private company
(b) Rahim (Guarantee) Limited is a guarantee limited company
(c) The Lawyer (PLC) is a public limited company
(d) Khan (SMC-Private) Limited is a single member company

7.* Every company shall supply within a period of 14 days, a copy of the memorandum and articles of the company, upon the request and payment of a prescribed amount, to its
(a) Creditor
(b) Auditor
(c) Director
(d) Member

8.* What type of resolution is required to change company's name?
(a) Special resolution
(b) Ordinary resolution
(c) Ordinary resolution with 14 days' notice
(d) Special resolution with 14 days' notice

9.* In relation to a company's articles of association, which of the following is incorrect?
(a) The articles of association set down the internal regulations of a company
(b) Promoters may or may not submit their own form of articles when submitting the forms necessary to form a company limited by shares.
(c) The articles of association form a contract between the members and the company and the members among themselves.
(d) Articles of association may be changed by ordinary resolution.

10.* If a company changes its name, then former name is required to be mentioned along with the new name for a period of
(a) 90 days from the date of issue of the new certificate of incorporation.
(b) 120 days from the date of issue of the new certificate of incorporation.
(c) One year from the date of issue of the new certificate of incorporation.
(d) None of the above is correct

11.* A company has been incorporated with a name in contravention of the relevant provisions of the Companies Act, 2017. Now the directors have received an order from the Registrar to rectify the name after providing an opportunity of being heard. The name is required to be rectified/change within a period of
(a) 15 days
(b) 30 days
(c) 120 days
(d) None of the above is correct

12.* Which of the following clauses is NOT covered in Table A of the First Schedule?
(a) Proceedings of directors
(b) Votes of members
(c) Instrument of proxy
(d) Annual return

13.* A company is changing its registered office from Gulgasht Colony to Bukhari Colony within the city of Multan. Which of the following requirements are applicable:

(i) Notify to registrar.
(ii) Pass a special resolution.
(iii) Get confirmation from the Commission on petition.

(a) (i) only
(b) (i) and (ii) only
(c) (i) to (iii) all
(d) (ii) and (iii) only

14.* A company is changing its registered office from Lahore (Punjab Province) to Multan (Punjab Province). Which of the following requirements are applicable:

(i) Notify to registrar.
(ii) Pass a special resolution.
(iii) Get confirmation from the Commission on petition.

(a) (i) only
(b) (i) and (ii) only
(c) (i) to (iii) all
(d) (ii) and (iii) only

A company is changing its registered office from Mardan (Khyber Pakhtunkhwa Province) to Quetta (Baluchistan Province). Which of the following requirements are applicable:

(i) Notify to registrar.
(ii) Pass a special resolution.
(iii) Get confirmation from the Commission on petition.

(a) (i) only
(b) (i) and (ii) only
(c) (i) to (iii) all
(d) (ii) and (iii) only

Answers to MCQs

1.	(c)	The principal line of business clause is the part and parcel of MOA.
2.	(b)	An aggrieved person may within 30 days of the order of refusal prefer an appeal to commission.
3.	(b)	Subscription clause of the memorandum of association of the company cannot be altered in the lifetime of the company.
4.	(d)	N/A
5.	(c)	The company is required to write only the province or part of Pakistan not forming part of the province in its memorandum of association.
6.	(c)	The public company must only use "Limited" at the end of the name.
7.	(d)	Every company, upon the request and payment of a prescribed amount by its member, shall supply a copy of the memorandum and articles of the company.
8.	(a)	The company can change its name by passing a special resolution and obtaining written permission of the registrar.
9.	(d)	The articles of association can be altered only by passing special resolution in the general meeting.
10.	(a)	After the change of name, the former name shall also be mentioned for ninety days from the date of issue of the new certificate of incorporation.
11.	(b)	The registrar may also direct the company to change its name within 30 days of the receipt of such directions.
12.	(d)	N/A
13	(a)	Only notice to registrar is required.
14	(b)	Special resolution and notice to registrar is required.
15	(c)	Special resolution, confirmation order from the Commission and notice to registrar is required.

APX 2: SUGGESTED SOLUTIONS TO PRACTICE QUESTIONS:

Q.1
(a) "The registered office of the company shall be situated in province of Punjab"
(b) "The registered office of the company shall be situated in Islamabad" because Islamabad is not part of any province.

Q.2
The name is not appropriate because it does not match with principal line of business clause.

Q.3
Memorandum shall includes following clauses:

Name Clause:
This clause shall contain the name of the company, including words"(Guarantee) Limited".

Registered Office Clause:
This clause shall state Province or part of Pakistan not forming part of a province in which registered office of the company is situated.

Principal Line of Business Clause:
Principal line of business shall be mentioned in the memorandum and it shall always match with the name of the company.

Liability Clause:
This clause shall state that liabilities of members is limited by guarantee.
This clause shall also state extent of liability of each member which he agrees to contribute at time of winding up.

Undertaking or Subscription Clause:
The company shall add an undertaking as may be specified by the SECP.
All subscribers also undertake to form company, to comply with clauses of memorandum, and to take shares in the company.

Q.4
Steps for changing name:
- Company shall obtain written permission of Registrar for new name and shall pass a Special Resolution.
- Company shall apply to Registrar (alongwith copy of special resolution and altered memorandum) to obtain approval.
- If approved, Registrar shall issue *certificate of incorporation* with new name.

Matters to be complied after the change of name:
After issuance of certificate of incorporation, company shall continue to mention its old name alongwith new name for 90 days:
- outside of every office or place of business
- on every document or notice of the company.

Examiners' Comments:
The overall performance was good as 59% of the candidates secured passing marks and about 8% secured full marks. However, the following issues were observed in most of the answer scripts:
- *After the change of name, registrar issues the new certificate of incorporation, instead it was mentioned that he will issue certificate of change of name.*
- *It was stated that the old name of the company is required to be mentioned along with the new name but where and for how long it has to be done was not mentioned. Some of the students mentioned it as 1 year.*
- *It was wrongly mentioned that Company has to publish new name and old names in an Urdu and English newspaper.*

Marking Plan:

Description	Marks
Description of the steps required for changing the name	2.0 marks
Description of the matters to be complied with after the change of name	3.0 marks

Q.4A

(a) Although the spelling are different but the name resembles so much that it cannot be allowed.
(b) Name is inappropriate, therefore, it will not be allowed.
(c) Name is deceptive, therefore, it will not be allowed.
(d) Name will not be allowed unless it obtains prior approval of SECP in writing as the name suggest connection with Federal Government (or authority of such government).

Q.4B

Validity of Name	How to overcome Deficiency
Word "Authority" in the name indicates connection with the Govt.	Either: ▪ word "Authority" must be removed from name, or ▪ approval of Commission must be obtained.
Word "Limited" is not included at end of name of company.	Either: ▪ word "Limited" must be included at the end of name, or ▪ License of Commission must be obtained to register company without including word "Limited" at end.
Name must not be identical or resemble too much with name of an existing company.	Promoters must apply Registrar to reserve the name.

Examiners' Comments:

- *Majority of the examinees were not able to identify the deficiencies in the proposed name and reproduced the complete section related to prohibition of certain names that was not required. Examinees should understand that in "application based questions" it is expected that the examinees will give the reply with reference to given situation.*
- *Many examinees focused only that a 'not for profit' organization with due permission from the Commission can get exemption to use the word 'Limited' and then reproduced the law relevant to this point only.*
- *Only few examinees had mentioned that the word "Authority" cannot be used as it implies connection with a government.*
- *Many examinees incorrectly mentioned that the approval is to be obtained from the "Registrar" instead of "Commission".*

Marking Plan:

Identifying the reasons of invalidity of the proposed name	3.0 marks
Explaining how the promoters can overcome the deficiencies in the proposed name	3.0 marks

Passing Percentage:
5%

Q.5

1. Company shall pass Special Resolution.
2. Application shall be filed with Commission to obtain confirmation. Commission shall consider rights and interest of members as well as creditors, and can make order on such terms and conditions as it thinks proper.
3. A copy of the order (confirming the alteration duly certified by an authorised officer of the Commission) shall be sent to Company and Registrar within 07 days of the order.
4. Company shall file with Registrar a copy of altered memorandum of association within 30 days of the order of Commission. If order is not filed within given period, it will be null and void. However, Commission may extend the time for filing of memorandum on sufficient cause shown.
5. Registrar shall register the same, and shall issue a certificate which shall be conclusive evidence that all requirements of Act have been complied with.
6. Physical record of the company shall also be transferred to the registrar in whose jurisdiction the registered office of the company has been shifted.

Examiners' Comments:

The performance in this part remained satisfactory. Majority of the candidates produced correct answers. However, some of the candidates failed to specify that copy of the approval of Commission shall be forwarded to the registrar of both the new and old provinces within thirty days of receiving Commission's order. Some candidates also mixed up the requirement of obtaining Commission's approval for re-location of company's registered office with that of sending Commission's approval to the registrar of both new and old places.

Marking Plan:	
01 to 02 mark for each correct step to be taken to re-locate company's registered office	6.0 marks

Q.6

What is principal line of business:

Principal line of business of company means the business in which:

- substantial assets are held (or likely to be held) or
- substantial revenue is earned (or likely to be earned)

, whichever is higher."

Requirement to include in memorandum:

Principal line of business shall be mentioned in the memorandum and it shall always match with the name of the company. However, existing companies shall continue with their existing memorandum.

Requirement to change principal line of business:

'To change Principal line of business clause, following procedure is followed:

1. Company shall pass Special Resolution.
2. Any change in the principal line of business shall be reported to the registrar within thirty days from the date of change.
3. Registrar shall register the alteration. If change in principal line of business is not in line with name of the company, Registrar may order the company to change the name also.

Approval from Commission is not required in this case.

Examiners' Comments:
Candidates seemed to be completely unaware of the provisions relating to principal line of business as well as the concept itself.

Marking Plan:	
Describing the relevant provisions of the Companies Act, 2017 pertaining to 'principal line of business'	5.0 marks

Passing Percentage:
6%

Q.7

Legal Provision:

If registered office is shifted within same province, alteration in memorandum or confirmation from Commission is not required.

Decision:

Objection of shareholder is not valid, as shifting is within same province i.e. Punjab and it does not require approval from Commission.

Examiners' Comments:
Almost all the candidates knew that shifting of registered office within the same province does not require confirmation from SECP.

Q.8

Relevant Legal Provision:

Principal line of business means the business in which company's:

- substantial assets are held (or likely to be held), or
- substantial revenue is earned (or likely to be earned)

, whichever is higher."

Decision:

Principal line of business on the basis of assets is Textile (55.6%), and on the basis of Revenue is Sugar (60%). As Sugar has higher percentage than Textile, therefore "manufacture and sale of Sugar" will be stated as principal line of business in memorandum.

Q.9

(i) No, because its a violation of law as requirement for minimum number is not met.
(ii) Yes, because its not a violation of law as requirement for minimum number is met.

Q.10

Registration of articles of association:

A company limited by shares has option to get its own Articles registered or adopt Table A (in Companies Act, 2017). Table A shall apply if Articles are not registered, or Articles do not address/modify contents discussed in Table A.

Signing of articles of association:

The article shall be signed by each subscriber, in the presence of a witness who shall attest the signature of the subscriber.

Examiners' Comments:

- *Examinees could not appreciate that a private company limited by share has the option to set out its own regulations for the company or adopt Table A in the First Schedule to the Companies Act, 2017 as its articles of association.*
- *Examinees did not mention about the implication(s) if articles are not registered or the registered articles do not exclude or modify the regulations in Table A.*
- *Examinees failed to identify that the articles were required to be signed by each of the subscribers in the presence of witnesses who shall attest the signature of the subscribers.*

Marking Plan:

Provision	Marks
Discussing the provisions related to the registration of articles of association in the given situation	2.0 marks
Discussing the provisions related to the signing of articles of association in the given situation	1.0 marks

Passing Percentage:
33%

Q.11

Relevant Legal Provision:

Only a member of a company can request company to provide a copy of memorandum or articles, after paying prescribed fee.

Decision and Basis of Decision:

"Arizona Grill Limited" is not bound to provide such copies to Mr Zouk because he is not a member.

Q.12

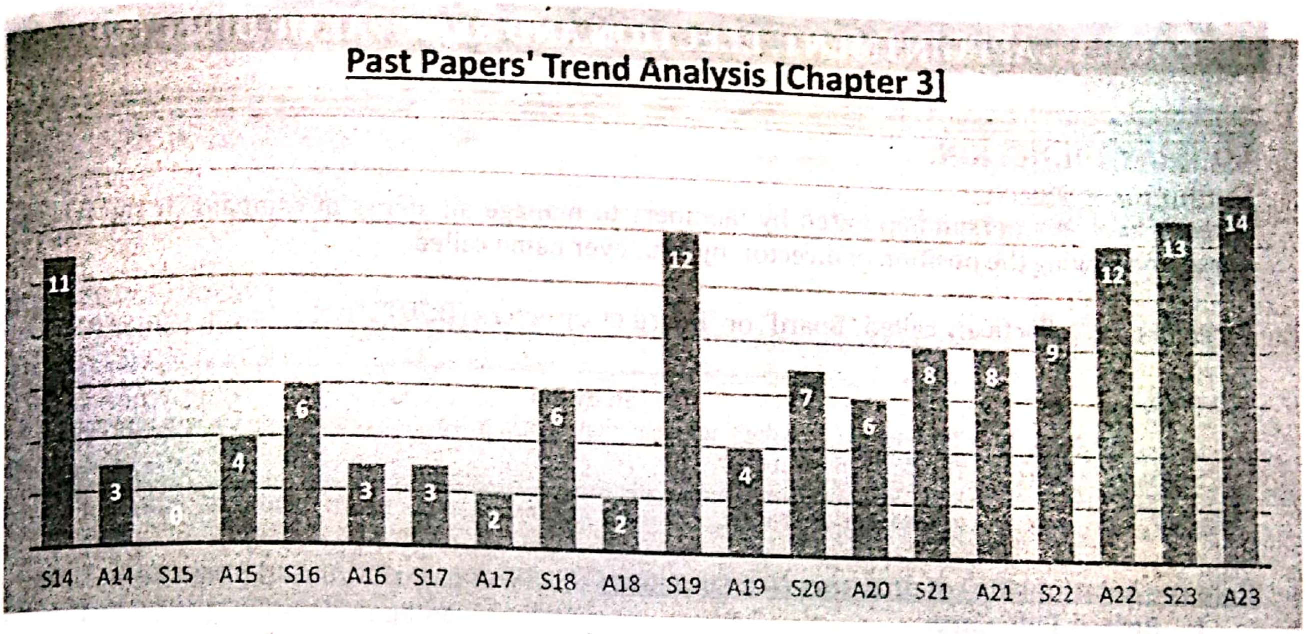
- Rs. 100,000 shall be considered a debt payable to company by Ahmed, Ahmer and Akbar each.
- This will be paid in such time, manner and condition as may be notified by the Commission.

CHAPTER 03

DIRECTORS

LO #	LEARNING OBJECTIVE	ICAP Book Reference	
		Chapter #	Paragraph #
PART 1 – APPOINTMENT, ELECTION AND REMOVAL OF DIRECTORS			
LO 1	INTRODUCTION	3	1.1*
LO 2	ELIGIBILITY AND INELIGIBILITY OF DIRECTORS	3	1.2
LO 3	APPOINTMENT OF DIRECTORS	3	1.3, 2.6
LO 4	ELECTION OF DIRECTORS	3	Section 2
LO 5	VACATION AND REMOVAL OF DIRECTORS	3	Section 3
PART 2 – POWERS, DUTIES AND PROCEEDINGS OF DIRECTORS			
LO 6	DUTIES AND POWERS OF DIRECTORS	3	4.1, 4.2, 4.3
LO 7	MEETING OF DIRECTORS	3	Section 5
LO 8	INDEMNIFICATION FOR NEGLIGENCE OR VIOLATION OF LAW	3	4.4
LO 9	NON-EXECUTIVE DIRECTORS AND PROTECTION	3	4.5, 4.7
LO 10	INDEPENDENT DIRECTOR IN LISTED COMPANY	3	4.6
PART 3 – RESTRICTIONS, PROHIBITIONS AND LIMITATIONS			
LO 11	LIMITATIONS AND RESTRICTIONS ON DIRECTORS	3	Section 6
APPENDIX			
APX 1	OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT)		
APX 2	SOLUTIONS TO PRACTICE QUESTIONS		

* *This paragraph includes some concepts which are discussed in later learning objectives.*



Overview of the Chapter:

- This is the first of two chapters on management of a company, and deals with Directors.
- This chapter discusses various legal requirements relating to directors e.g. appointment, tenure, qualification and disqualification, powers, restrictions.

Examinability of the Chapter: ***(considering latest syllabus and testing by ICAP)***

Although, examiner may ask question from any topic in any way. However, based on my past experience:

- Normally, a question of case study is asked from this chapter. Question of reproduction is rarely tested.
- This is a very important chapter. 8 – 10 marks' question is expected from this chapter in exam.

*In-depth analysis of examinability with particular reference to **Spring 2024 attempt** will be explained in class.*

PART 1 – APPOINTMENT, ELECTION AND REMOVAL OF DIRECTORS

LO 1: INTRODUCTION:

Definition of Director:

Director means a person appointed by members to manage all affairs of company. It can be any person occupying the position of director, by whatever name called.

Directors are collectively called "Board" or "Board of Directors (BOD)".

> **Study Tip**
> The word "Director" in a Job Title does not mean that person is legally a director e.g. Finance Director, HR Director, IT Director, Marketing Director.

Role (or Relationship) of directors in a Company:

1. **Role as Fiduciary:**

   A fiduciary relationship is established when one party puts trust on other party. A fiduciary takes care of money for another person. Directors and companies have a fiduciary relationship. Directors must act in the best interests of the company and shareholders.

   A director lacks fiduciary behavior if he intentionally keeps the company and members at disadvantage (e.g. when a director makes profit from a contract with company and does not disclose personal interest).

2. **Role as Agent:**

   Directors are agents of company, and act in accordance with articles of the company.

Q.1 **PRACTICE QUESTIONS**

Which of the following employees are directors of ABC Limited?

(a) Faisal is senior employee of ABC Limited and his designation is Human Resource Director. He was appointed by directors and does not participate in board of directors' decision making.

(b) Naveed is senior employee of ABC Limited and his designation is General Manager Operations. He was appointed by members to manager the company and he participates in board of directors' decision making.

(ICAP Book: Chapter 3 – Example # 01, 02)

LO 2: ELIGIBILITY AND INELIGIBILITY OF DIRECTORS:

Eligibility Criteria:

A director must:

1. be a natural person.
2. be a member (with certain exceptions).
3. meet additional criteria if specified by articles e.g. holding qualification shares, education and experience requirements in case of banking and insurance companies.

Exam Tip – Exceptions to rule "director must be a member"

In following cases, a non-member can be a director:
- a whole-time director who is an employee of the company (also called executive director).
- a chief executive
- a person representing a member who is government or a body corporate.
- a person representing a creditor or other special interests through contractual arrangements.

Ineligibility Criteria:

Act has specified that following persons cannot become directors of a company:
1. a person who is not a member (exceptions described above).
2. a body-corporate/Company.
3. a minor.
4. a person with unsound mind
5. a person who does not hold national tax number (Commission may grant exemption in this case).
6. a person who is undischarged insolvent or has applied to Court to be declared as insolvent and his application is pending.
7. a person who has been convicted by a Court for an offence involving immorality.
8. a person who lacks fiduciary behavior as declared by a Court during last 5 years.
9. a person who is disqualified from holding office under any provisions of the Act.

For **listed companies**, following persons are **also** disqualified:
1. a person who has been declared defaulter of a financial institution by a Court.
2. a person or his spouse is a broker or is an officer/director of a brokerage house.

*Broker means a person who is engaged in **business** of buying and selling securities for himself or on account of others.*

Exam Tip s

1. A company can be a subscriber/member of another company; however, a company cannot be a director of any other company.
2. Criteria is to be met at time of appointment, as well as during tenure of directorship.

Penalty to a bankrupt acting as director:

If an undischarged insolvent acts as a chief executive or director, he shall be liable to imprisonment upto **2 years** or **fine** or **both**.

PRACTICE QUESTIONS

Q.2

ABC Limited is holding company and owner of 80% shares of XYZ Limited.
(a) Can ABC Limited be appointed as director of XYZ Limited?
(b) If not, how can ABC Limited represent itself in decision making of board?

(ICAP Book: Chapter 3 – Example # 03)

Q.3

Last year, the court declared Sami as lacking fiduciary behaviour as he did not disclose his interest in transactions with the company, ABC Limited, in which he was a director.
This year, Sami is considering to join XYZ Limited as director. Can he be appointed as director of XYZ Limited?

(ICAP Book: Chapter 3 – Example # 04)

Q. 4
Babar is senior employee of the company and because of his experience, he was appointed as director and is now also involved in board of directors' decision making.
What type of director he is?
(ICAP Book: Chapter 3 – Example # 05)

Q. 5
Under the provisions of the Companies Act, 2017 comment on following situation:
Zafar was recently appointed as a Director of HP Limited, a listed company. In March 2018 the board of directors came to know that Zafar had been declared a defaulter by the High Court. **(02)**
(ICAP, CAF 07 Level – Spring 2018, Q. 8a ii)
(ICAP Book: Chapter 3 – Practice Question # 01)

Q. 6
Sajid was recently appointed as a director of SE Limited, a public unlisted company. In July 2020, the board of directors came to know that Mrs. Sajid is engaged in business of brokerage on Pakistan Stock Exchange. Discuss the appointment of Sajid as director.
(ICAP Book: Chapter 3 – Practice Question # 02)

LO 3: APPOINTMENT OF DIRECTORS:

Number of Directors:
Every company shall have directors.

Minimum number of directors under the Act:

Type of Company	Minimum no. of directors (if not fixed by articles)
Single member company (SMC)	One
Private company (other than SMC)	Two
Public company – unlisted	Three
Public company –listed	Seven

Maximum number of directors under the Act:
Companies Act 2017 does not specify maximum number of directors. Articles or Directors may decide any number of directors to be appointed.

Appointment and Tenure of Directors:

- **First directors** shall be appointed by subscribers of memorandum, and they shall hold office till the election of directors in first AGM.
- **Subsequent directors** shall be elected by members at general meeting, and they shall hold office for **three years**, unless he earlier dies or is disqualified or resigns. (however, a company limited by guarantee not having share capital may reduce this period through its articles.)

Particulars of first directors shall be submitted alongwith documents for incorporation. Number of first directors may be increased by appointing additional directors in a general meeting.

Casual Vacancy of Directors: *(e.g. death, disqualification, resignation)*
Casual vacancy is filled by directors, and person appointed shall hold office for the remainder term of the director in whose place he is appointed.

Filling casual vacancy is required if:

- company is a listed company (to be filled within **90 days** of occurrence), **or**
- remaining directors are less than minimum number required by law/articles.

PRACTICE QUESTIONS

Q.7
Abid, Qasim and Tariq were the only members of Alpha Securities Limited, a public company and were elected as directors on 30 June 2009. Qasim expired on 2 February 2012 in a road accident.
(a) Briefly describe the provisions of the Companies Act, 2017 relating to the casual vacancy as described above. **(05)**
(b) Discuss the consequences if Abid and Tariq failed to fill the above vacancy. **(05)**
(ICAP, CAF 07 Level – Spring 2012, Q. 2)
(ICAP Book: Chapter 3 – Practice Question # 07)

LO 4: ELECTION OF DIRECTORS:

Procedure for Election of Directors for a company having share capital:

1. **Fixation of number of directors to be elected:**
   Existing Directors of the company shall fix the number of directors to be elected atleast **35 days** before the general meeting.

   Once the number is fixed in the Board meeting, it shall not be changed except with the prior approval of the general meeting in which election is to be held.

2. **Send notice of meeting:**
   Notice of the general meeting shall be sent to members atleast **21 days** before meeting. Notice shall expressly state number of directors to be elected, and names of retiring directors.

3. **Filing of intention to become director:**
   A person (whether retiring director or otherwise) seeking to contest election shall file a notice of his intention in writing with company atleast **14 days** before relevant general meeting. Such person may withdraw notice anytime before holding of election.

4. **List of candidates to be transmitted to members:**
   All notices of intention received by company shall be transmitted to members atleast **07 days** before general meeting in the same manner as of notice of AGM. In the case of a listed company such notices shall also be published in English and Urdu daily newspapers having wide circulation.

5. **If number of candidates is equal or less than number fixed by directors:**
   All directors shall stand elected unopposed without Poll.

6. **If number of candidates exceed number fixed by directors:**
   - Poll for election of directors shall be conducted.
   - Every member shall have votes equal to:
     "Number of his shares x Number of directors to be elected"
   - A member can distribute his votes between different candidates in any way he thinks appropriate (even all votes can be given to one person).
   - Candidate getting highest votes shall be declared elected as director, and then next candidate, and so on until number of directors fixed have been elected.

Duty of Retired Directors:

- Retiring directors shall continue to perform their functions until their successors are elected.
- Retiring directors shall take immediate actions to hold election of directors.
    - Holding of such general meeting can be delayed for a period **upto 90 days** (or such extended time as may be allowed by Registrar), only in exceptional circumstances beyond the control of directors, or in compliance of any order of Court.
    - In case of any hurdle, director will report such circumstances to Registrar **within 45 days** before general meeting in which election is to be held.

If period is expired and election is not held, Registrar may (either on its own or on representation of members holding 10% voting power or 10% of total members) direct the company to hold AGM or EGM for the election of directors on such terms and conditions as may be specified in order.

Procedure for Election of Directors for a company NOT having share capital:

Directors shall be elected by members in general meeting in the manner as provided in articles.

> **Exam Tip – Consent to act as director**
> - A person shall be appointed as director (or chief executive) of a company only if he has filed his **consent** to become a director (or chief executive) **in writing** to **company**. *(atleast 14 days before election of directors)*
> - Company shall **file** such consent to **Registrar** within **15 days** of his appointment.

Power of Court to declare election of directors invalid:

Court may declare election of all directors or any one of them as invalid:

1. if member holding **10%** or more voting powers
2. apply to Court within **30 days** from the date of election, and
3. it is proved that there has been material irregularity in the holding of the elections and related matters.

> **Exam Tip – Past Acts of disqualified director are valid**
> If a defect is discovered in the appointment of a director, such director shall not exercise any right as director from the date of discovery of defect (until defect is removed). However, his past acts as director will remain valid.

Power of substantial acquirer to hold Fresh election of directors:

1. If a person gets required shareholding to become a director, he may apply company to hold fresh election of directors.
2. Within **30 days** of request, company shall proceed to hold fresh election (by calling general meeting with agenda of holding election of directors).
3. However, number of directors fixed in preceding election shall not be reduced.
4. To hold fresh election, a listed company shall follow procedures specified by Commission.

Appointment of Nominee Directors:

Nominee Directors by Govt. or Body Corporate:

In addition to elected directors, a company may also have directors nominated by Govt. or Body Corporate (if they have made investment in the company), termed as "deemed to have been elected directors".

Such directors are considered for the calculation of minimum number of directors, and shall hold office during the pleasure of the nominating body.

Nominee Directors by Creditors:

A company can also have directors nominated by creditors, because of contractual arrangements.

PRACTICE QUESTIONS

Q.8

Explain whether or not the following statement is in accordance with the provisions of the Companies Act, 2017.

A company may change the number of directors to be elected at least 21 days before the date of general meeting at which the election is to be held.

(04)

(ICAP, CAF 07 Level – Spring 2011, Q. 6a)
(ICAP Book: Chapter 3 – Practice Question # 03)

Q.9

Ali has got 10,000 voting shares of Rs. 10 each and he is entitled to cast vote for the purpose of election of directors. 12 candidates contested the election for 8 seats of directors.

(a) How much votes do Ali have?
(b) Can he give votes to more than one candidates?

(ICAP Book: Chapter 3 – Example # 07)

Q.10

ABC Limited held voting for election of directors. Five candidates contested the election for three seats of directors. Adeel, Babar, Chandio, Dawood and Ehsan got 75000, 44000, 12000, 57000 and 17000 votes respectively.

(a) Which of the directors will be declared as elected directors?
(b) Which of the elected directors will have highest decision making power in board meeting?

(ICAP Book: Chapter 3 – Example # 08 & 09)

Q.11

(a) Existing directors fixed the number of directors at eight for the next term. How directors will be elected if:
(i) Eight persons send notices of interest to contest the election of directors
(ii) Twelve persons send notices of interest to contest the election of directors

(ICAP Book: Chapter 3 – Example # 06)

(b) ABC Limited, a public unlisted company, has 10 million ordinary shares and five directors. Shahid acquired 2.5 million ordinary shares. Can he require the company to hold fresh elections?

(ICAP Book: Chapter 3 – Practice Question # 04)

Q.12

Recently, the company secretary of Al-Falah Sugar Mill Limited (ASML) has received a letter from Ghalib, a shareholder whose holdings in the company's shares has increased to 14% during the year 2013, to seek appointment on ASML's board of directors. The company secretary has informed him that he cannot be admitted on the board till the next elections become due.

Not being satisfied with the response, Ghalib has asked you to advise on the above matter and explain the course of action available to him under the Companies Act, 2017.

(05)

(ICAP, CFAP 02 Level – Winter 2013)
(ICAP Book: Chapter 3 – Practice Question # 05)

Q.13

Junaid was elected as a director of Abid Limited in its last annual general meeting. After a few months, it was found that Junaid's appointment was not valid as votes by certain members were counted twice due to an error. Few directors have challenged the validity of all meetings attended by him and the actions taken therein. Advise.

(ICAP Book: Chapter 3 – Practice Question # 06)

Powers of Directors:

Powers which can be exercised by board without obtaining approval in general meeting:

Following powers can be exercised by directors, but only after passing a resolution in board meeting:

1. To issue shares, debentures, other redeemable capital, or to borrow money.
2. To make loans. (however, in banking companies acceptance of deposits or placement of funds is not considered loan).
3. To make investment.
4. To approve quarterly financial statements and annual financial statements.
5. To declare interim dividend.
6. To approve bonus for employees
7. To incur capital expenditure or dispose of a fixed asset exceeding prescribed amount. *[however, a sale or disposal of undertaking will result in closure of business, there should be viable alternate business plan approved by Board of a Listed Company]*
8. To undertake obligations under leasing contracts exceeding such amount as may be notified
9. To approve a transaction in which a director (or partnership firm in which he is a partner, or a private company in which he is a director) has interest.
10. To write-off material debtors, inventories, advances and other assets.
11. To settle material litigations.
12. To take over a company or acquiring controlling stake in another company.
13. To appoint and remove chief executive.
14. To fill casual vacancy of director.

Powers which can be exercised by board after obtaining approval in general meeting:

Directors of a public company can also exercise following powers, but only after obtaining consent of general meeting:

1. sell or dispose a subsidiary of the company.
2. sell, lease or otherwise dispose of the undertaking *(venture)* or a sizeable part of it (i.e. 25% or more value of assets in that class), unless it is the company's business.
3. remit, or give extension of time for repayment of debt against specified persons.

Authorization for such powers may be specific to transactions, or may be general. Any such resolution/approval of general meeting shall lapse, if not implemented within 1 year.

Exam Tip – All Directors are Equal

Authority given to directors are exercised by them by passing resolution in board meeting. Decisions in BOD meetings are made on the basis of simple majority. All directors have equal authority and one vote in Board meeting. Directors are also **not variable representative** of company i.e. every director is responsible for entire business, not just a part of it.

PRACTICE QUESTIONS

Q.21

At the annual general meeting of Rahbar Refineries Limited (RRL), certain shareholders have raised objections on matters related to the use of the company's funds. In the opinion of those shareholders the directors have exceeded the authority vested upon them by the Companies Act, 2017. Identify those powers of directors which the shareholders of RRL may be referring to.

(05)

(ICAP, CAF 07 Level – Spring 2010, Q. 10)
(ICAP Book: Chapter 3 – Practice Question # 17)

LO 7: MEETING OF DIRECTORS:

Quorum of Board Meeting:

Following is the minimum numbers for Quorum (although articles may fix higher numbers):

- **Listed Company:**
  1/3rd of total number or **4** whichever is higher.
  Participation by video-conferencing or by other audio-visual means shall also be counted.

- **Other companies:**
  As per Articles.

- **Quorum to fill casual vacancy, If there not enough directors to form a quorum:**
  All the remaining directors shall be quorum for this limited purpose.

Frequency of Board Meeting:

Directors of a **public company** are required to meet at least **once in each quarter** of a year.

Passing of resolution by directors through circulation: (i.e. without conducting meeting)

Validity:

A resolution through circulation approved by majority of directors/committee of directors, shall be as valid and effectual as if passed at a board meeting duly held.

Rules:

Directors can pass a resolution through circulation, provided:

1. Resolution shall be circulated to all directors alongwith necessary papers.
2. Resolution shall be signed in writing by directors (or committee of directors).
3. Once approved, a director cannot revoke his agreement to such resolution.
4. Such a resolution shall be noted in the minutes of subsequent board meeting.

Records of resolutions and meetings of board:

1. Every company shall maintain record of resolutions (passed at meeting or by circulation), and minutes of board meeting (or committee of directors), alongwith names of participants.
2. Chairman of the meeting or chairman of the next meeting shall sign and authenticate minutes.
3. A copy of minutes of board meeting shall be sent to every director within **14 days** of meeting.
4. The minutes/records must be kept at the registered office of the company (from the date of the resolution) in physical and electronic form. It shall be preserved for at least **10 years** in physical form and **permanently** in electronic form.

PRACTICE QUESTIONS

Q.22

State what will be the quorum of board meetings in following cases:

(a) A listed company has seven directors.
(b) A listed company has seventeen directors.
(c) A listed company has seven directors. Unfortunately four directors died in a car accident together.

(ICAP's Official Study Text for CAF 07 – Example # 10, 11, 12)

Q.23
Haider Limited (HL), a listed company, is in the process of finalization of a financing facility with a bank. The bank requires a copy of the board resolution for approval of the terms of the financing. However, no board meeting is planned in the near future and few directors are out of the country.
In the light of the provisions of the Companies Act, 2017 explain what alternative course of action is available to HL and the steps it would be required to take assuming that nothing in this regard is stated in the articles of association of the company. (05)
(ICAP, CFAP 02 Level – Winter 2015, Q.3)
(ICAP Book: Chapter 3 – Practice Question # 22)

LO 8: INDEMNIFICATION FOR NEGLIGENCE OR VIOLATION OF LAW:

A company shall not indemnify a director or other officer in case of his negligence or non-compliance with law, and any such provision in articles or agreement shall be void.

However, a company can indemnify them for defending themselves in a legal proceeding (in relation to company whether civil or criminal), in which they are proven innocent.

PRACTICE QUESTIONS

Q.24
Rashid was appointed as Chief Executive of Chalaak Limited (CL). At the time of his appointment, Adil, one of the major shareholders and founder member informed him that since last four years CL is paying 90% cash dividend to all the shareholders, however, Adil mentioned that he didn't like to pay dividend to minority shareholders and advised Rashid not to pay from this year. Rashid informed Adil that as per the provisions of Companies Act, 2017 Chief Executive shall be punishable with imprisonment that may extend to two years and with fine which may extend to five million rupees if the dividend is not paid within specified period of time after dividend has been declared.
Adil proposed Rashid to sign a contract with CL in which it will be clearly indicated that Rashid will be indemnified against all sort of liabilities if any imposed on him due to non-payment of dividend to the minority shareholders of CL. The contract was signed on 28th March 2020 between CL and Rashid. Is the contract valid?
(ICAP Book: Chapter 3 – Practice Question # 18)

Q.25
Asad filed criminal case against Bilal, who is working in the capacity of Chief Financial Officer of Shining Star Limited (SSL), on the premise that Bilal has misappropriated SSL's funds to the tune of Rs. 10 million. Bilal appointed M/s Dayyanat-dar & Co. Legal Advisors and provided all the evidences with respect to all the allegations raised by Asad in the said criminal case and paid Rs.500,000/- on account of legal fee. Based on the documentary evidences provided by Bilal the court acquitted i.e. declared Bilal as innocent. Bilal requested SSL management to indemnify him Rs. 500,000/- paid by him to the lawyer and provided the Legal Advisors invoice along with other necessary documents. Can SSL indemnify Bilal in above situation.
(ICAP Book: Chapter 3 – Practice Question # 19)

LO 9: NON-EXECUTIVE DIRECTORS AND PROTECTION:

Who is a Non-Executive Director
It means a director who:
1. is not in executive management team.
2. is not involved in managing the affairs of the company, and does not give his whole working time to company,
3. does not draw any remuneration from the company except the meeting fee.
4. is not a beneficial owner of the company or its associated companies;
5. is expected to give an outside viewpoint in decision making by board;

A non-executive director may or may not be independent.

Protection to non-executive director:

A non-executive director (and independent director) of a listed company or public sector company, shall not be liable for any act or omissions of company unless:

1. act or omission was done with his knowledge and consent, or
2. he did not act diligently.

PRACTICE QUESTIONS

Q. 25A

Election of directors of Excellent Technologies Limited (ETL), a listed company, is scheduled to be held on 15 October 2020. The board of directors has requested Mohsin, one of the leading engineers, to contest the upcoming election as non-executive director for adding value to the board.

Before responding to the offer of ETL's board, Mohsin has sought your advice on the following concerns:
(i) Since he has no relationship with ETL either pecuniary or otherwise, can he contest the election as non-executive director?
(ii) Would he be subjected to unforeseen liability that may arise due to adverse action of other directors?

Under the provisions of the Companies Act, 2017, advise Mohsin with regard to the above concerns. **(06)**

(ICAP, CAF 07 Level – Autumn 2020, Q. 10)
(ICAP Book: Chapter 3 – Practice Question # 20)

LO 10: INDEPENDENT DIRECTOR IN LISTED COMPANY:

Who is an Independent Director:

Independent directors are those directors who do not have any relationship with management, company or its related parties. An independent director can give his judgment without any conflict of interest. An executive director can never be an independent director.

Manner of selection of independent directors and maintenance of databank

Responsibilities of Institute/Body maintaining Data Bank:

1. An **Institute/Body** authorized by SECP shall maintain on its website a databank containing Names, Address and Qualifications of persons who are willing and eligible to act as Independent Directors.
2. Institute may determine necessary terms and conditions and procedures for inclusion of name of individuals in databank.
3. Institute may also fix a fee to be paid by individual for inclusion of his name, and for companies to provide them access to databank.

Responsibilities of Individuals:

1. Individual shall meet qualification/disqualification criteria and other regulations for independent directors.
2. Every individual is responsible for accuracy/completeness of particulars provided by him to Institute (and for subsequent change therein).

Responsibilities of Companies Appointing Independent Directors:

1. Company is responsible for due diligence of independent director, before appointment.
2. Company shall ask independent director to submit an undertaking on a non-judicial stamp paper that he meets the requirements of regulations relating to independent director, alongwith relevant supporting information.

Maximum Number of directorship in Listed Companies:
A person can be appointed as director (or alternate director) in maximum 5 companies. *[Directorship in subsidiaries shall not be counted]*

PRACTICE QUESTIONS

Q.26
Azad Limited (AL) is a listed company engaged in the business of manufacturing and supply of electrical appliances. Mr. Majnou, a director of AL, has applied for an interest free loan from the company to be repayable in five years. In view of the provisions of the Companies Act, 2017 describe the circumstances under which AL may grant loan to Mr. Majnou. **(02)**

(ICAP, CAF 07 Level – Autumn 2015, Q. 6a)
(ICAP Book: Chapter 3 – Practice Question # 32)

Q.27
Discuss the provisions relating to the payment of remuneration to any of the directors for attending the board meeting and performing extra services. **(02)**

(ICAP, CAF 07 Level – Autumn 2019, Q. 10b)
(ICAP Book: Chapter 3 – Practice Question # 24)

Q.28
Explain whether or not the following statements are in accordance with the provisions of the Companies Act, 2017.
(a) Directors' remuneration for performance of extra services including the holding of office of the chairman or attending the board meeting is decided by the chief executive. **(04)**
(b) A director of a listed company cannot assign his office to another person under any circumstances. **(03)**

(ICAP, CAF 07 Level – Spring 2011, Q. 6 cd)
(ICAP Book: Chapter 3 – Practice Question # 23, 25)

Q.29
In light of the provisions of the Companies Act, 2017 advise the directors of KM Limited on the following matters:
(a) Faisal, one of the directors, wishes to assign his office to Saeed as Faisal is going abroad for personal work. **(04)**
(b) The CEO has refused the personal loan application of Y, who is also a technical director, on the premise that grant of any loan to directors is prohibited under the law. **(04)**

(ICAP, CFAP 02 Level – Summer 2014, Q. 6)
(ICAP Book: Chapter 3 – Practice Question # 26, 33)

Q.30
Mr. Hameed, who is a director in ABC Limited, a listed company, is planning to move to Europe for one year to set up his own business. In the light of Companies Act, 2017 you are required to respond to his request for advice, as regards his responsibilities, under the Companies Act 2017, in respect of:
(a) attending the annual general meeting of the company.
(b) attending the board meetings of the company.
(c) conditions under which he may be allowed to assign his office to another person.

(ICAP Book: Chapter 3 – Practice Question # 27)

Q.31
Rapid Constructions Limited (RCL) is a listed company. Advise the Board of Directors of RCL on the following matters, in the light of the provisions of the Companies Act, 2017:
(a) A request has been made by an independent director for increase in remuneration of directors from Rs. 25,000 to Rs. 40,000 for attending the Board and sub-committee meetings and performing extra services. **(02)**
(b) Mr. Dawood, who is a director, wants to appoint his brother in his place as he is going abroad on vacations. **(02)**
(c) Mr. Asad is a director but is not a member of the company. **(03)**

(ICAP, CFAP 02 Level, Winter 2016, Q. 3 abd)
(ICAP Book: Chapter 3 – Practice Question # 28)

Q.32
Ahmed is a director on the boards of Nazeer Industries Limited (NIL) and King Limited (KL), which is the subsidiary of NIL. KL is in process of disposing off its land in Industrial Zone 1 since it wants to shift the production plant to industrial Zone 2. Owing to the growing demand of Zone 2, the management of KL has been finding it difficult to obtain the plot in desired zone. Considering the difficulties of KL, Ahmed has offered to sell his plot in Zone 2 in consideration of KL's land in Zone 1. According to Ahmed, the fair values of both properties are approximately the same.
Under the Companies Act, 2017 state the conditions which must be met before such transaction is executed under the arrangement proposed by Ahmed.

(ICAP Book: Chapter 3 – Practice Question # 29)

Q.33
Kismet Limited (KL) has entered into an arrangement with Ahmad Laiq for the purchase of a specialized machinery worth Rs. 2,500,000 used in the manufacture of electric irons. Ahmad Laiq is the brother of one of KL's directors and also a director in KL's holding company. Ahmad Laiq has agreed to take 20,000 shares in KL in consideration for the payment of machinery. Advise whether KL can acquire the machinery from Ahmad Laiq.

(ICAP Book: Chapter 3 - Practice Question # 30)

Q.34
The directors of Shahzada Limited, a listed company, have offered Mr. Shamas who is presently working as General Manager Operations, to become the Chief Executive of the company. Last year, Mr. Shams obtained a loan amounting to Rs. 1.2 million in accordance with the company's employment rules, out of which Rs. 0.8 million is still outstanding. Mr. Shams has agreed to take the position of Chief Executive but is not is a position to repay the loan immediately.
Discuss the requirements of the Companies Act, 2017 which Mr. Shams will need to comply with. (08)

(ICAP, CAF 07 Level – Spring 2008, Q. 7a)
(ICAP Book: Chapter 3 – Practice Question # 31)

Q.35
Mr. Babar is currently working as a Marketing Manager in ST Limited (STL). The management intends to appoint him as the Chief Executive of the company. He is willing to accept the offer and has requested for a loan of Rs. 10 million. Moreover, he had also taken a loan in 2009, of which Rs.1 million is still outstanding.
State the conditions as specified in the Companies Act, 2017 which STL would need to comply with, in respect of the above loans.

(ICAP, CFAP 02 Level – Winter 2011, 12a)
(ICAP Book: Chapter 4 – Practice Question # 05)

APX 1: OBJECTIVE BASED QUESTIONS AND ANSWERS:

Select the most appropriate answer from the options available for each of the following Multiple Choice Questions. Each MCQ carries ONE mark. These questions are adapted from ICAP's Study Text.

1.* The names and number of first directors shall be decided by the
(a) Members of the company
(b) Promotors of the company
(c) Subscribers to the memorandum
(d) CEO of the company

2. Casual vacancy on the board of directors of a listed company must be filled:
(a) By calling an extra ordinary general meeting within 90 days from the date of such vacancy
(b) By the directors not later than 90 days from the date of such vacancy
(c) By the directors or members in general meeting, as the case may be, in accordance with the provisions contained in the articles of association
(d) By the members in upcoming annual general meeting

3.* Which of the following ineligibility applies only to appointment of directors in a listed company:
(a) Is a minor
(b) Is an undischarged insolvent
(c) Has been convicted by a court for an offense involving moral turpitude
(d) Has been declared by a court as defaulter in repayment of loan to a financial institution.

4.* A director shall be treated to have vacated the office of director if he absents himself from
(a) Meetings held in the last three months
(b) Meeting held in the last 120 days
(c) Three consecutive meetings of the board of directors
(d) Three consecutive meetings of the members

5.* A company is not allowed to contribute any amount
(a) To any social purpose
(b) To any dividend payment
(c) To any political party
(d) To any Zakat payment

6.* The maximum number of director of a public company fixed by the Companies Act, 2017 is
(a) 07
(b) 10
(c) 50
(d) Not specified by the Companies Act, 2017

7.* The quorum for a meeting of directors of a listed company will not be less than
(a) Two-third of their number or 4 whichever is greater
(b) One –third of their number or 4 whichever is greater
(c) One-fourth of their number or 4 whichever is greater
(d) Three-fourth of their number or 4 whichever is greater

8. Robust Limited's (RL's) election of directors is to be held next week. RL's Board of Directors has fixed nine directors to be elected for the next term. Whereas ten members have filed notices of their intention with RL to offer themselves for election as a director.

Mr. Arqam owns 100,000 shares in RL. The maximum number of votes Arqam may be allowed to cast in favour of the director(s) would be?
(a) 9 votes
(b) 100,000 votes
(c) 900,000 votes
(d) 1,000,000 votes

9.* Number of directors to be elected in the forthcoming election shall be fixed by the directors at least
(a) 21 days before election in the general meeting
(b) 35 days before election in the general meeting
(c) 60 days before election in the general meeting
(d) None of the above is correct

10.* The persons who may wish to contest the election of directors are required to give notice to the company at least
(a) 7days before election
(b) 14days before election
(c) 21days before election
(d) None of the above is correct

11.* Any casual vacancy on the board of a listed company shall be filled up by the directors at the earliest but not later than
(a) 90 days from the date, the vacancy occurred.
(b) 120days from the date, the vacancy occurred.
(c) 60 days from the date, the vacancy occurred.
(d) None of the above is correct

12.* In case of any material irregularity in the election of the directors, members having 10% or more voting power may apply to the court within
(a) 14 days of election
(b) 21 days of election
(c) 30 days of election
(d) None of the above is correct

13.* Mr. M has given a request to the company to hold fresh election of directors upon acquisition of a sizable shareholding in the company that is public unlisted company. The directors are supposed to proceed to hold fresh election of directors within
(a) 30 days of such application
(b) 60 days of such application
(c) Any time period as decided by the SECP
(d) One year of such application

14.* A person cannot be appointed as director of a company if he is lacking fiduciary behaviour and a declaration to this effect has been made by the court at any time during preceding
(a) 3 years
(b) 5 years
(c) Any time period as decided by the court
(d) None of the above is correct

15.* The directors of a public company shall meet at least once in
(a) Every month
(b) Each quarter of a year
(c) A year
(d) None of the above is correct

Answer to MCQs:

1	(c)	First directors shall be decided by the subscribers of memorandum and their particulars shall be submitted along with the documents for incorporation.
2	(b)	By the directors not later than 90 days from the date of such vacancy.
3	(d)	A person shall not be appointed as a director of a listed company if he has been declared as defaulter in repayment of loan to a financial institution.
4	(c)	If a director absents himself from the three consecutive meetings of the board of directors, he shall be treated to have vacated the office.
5	(c)	A company is not allowed to contribute any amount to any political party or for any political purpose.
6	(d)	The Companies Act, 2017 has not provided the maximum number of director for any type of company.
7	(b)	The quorum for a meeting of directors of a listed company will not be less than one –third of their number or 4 whichever is greater
8	(c)	900,000 votes i.e. product of 9 directors to be elected and 100,000 shares.
9	(b)	Existing directors decide the number of directors for the next term at least 35 days before the date of meeting.
10	(b)	Every person interested in contesting the election of the directors sends the notice of his interest to the company at least 14 days before the meeting.
11	(a)	The casual vacancy in a board of a listed company must be filled by the directors within 90 days from the date of the vacancy.
12	(c)	Members holding 10% of the voting power in the company may apply to the court within 30 days of the election of the directors to declare it invalid.
13	(a)	Upon receiving such requisition the board shall within 30 days, proceed to hold fresh elections of directors of the company.
14	(b)	A person cannot be appointed as director of a company for the period of 5 years from the court order.
15	(b)	The directors of a public company are required to meet at least once in each quarter of a year.

SOLUTIONS TO PRACTICE QUESTIONS:

Q.1

(a)

Relevant Legal Provision:

Director means a person appointed by members to manage the affairs of company.

Decision and Basis of Decision:

Faisal is not a director of ABC Limited, because he was not appointed by members and does not participate in board's decision making.

(b)

Relevant Legal Provision:

Director means a person appointed by members to manage the affairs of company.

Decision and Basis of Decision:

Naveed is a director of ABC Limited, because he was appointed by members and participates in board's decision making.

Q.2

(a)

Relevant Legal Provision:

A directors must be a nature person.

Decision and Basis of Decision:

ABC Limited cannot become director of XYZ Limited as it is not a natural persons.

(b)

Using its voting rights, ABC Limited can nominate and elect a nature person of its choice to act as director of XYZ Limited.

Q.3

Once declared as lacking fiduciary behavior, Sami cannot be appointed as a director of ABC Limited or any other company for 5 years. He may be appointed as director once five years have elapsed after the court order.

Q.4

Babar is a whole-time director (or executive director).

Q.5

Relevant Legal Provision:

In case of a listed company, a person is disqualified for appointment as director if he has been declared defaulter of a financial institution by a Court.

Decision and Basis of Decision:

If Zafar defaulted in repayment of loan to a financial institution, he is disqualified. In any other case, he is still qualified.

Examiners' Comments:

This situation proved too difficult as hardly few students knew that default in making repayment of loan disqualifies a person from being a director. Being declared a defaulter for any other reason does not result in such disqualification.

Marking Plan:

Discussion on the relevant provision of the Companies Act, 2017 and the conclusion on the basis thereof	2.0 marks

Q.6

Relevant Legal Provision:

In case of a listed company, a person is disqualified for appointment as director if his spouse is engaged in brokerage business.

Decision and Basis of Decision:

Sajid is not disqualified as he is appointed as director of an unlisted company.

Q.7

Relevant Legal Provision:

A public unlisted company is required to have atleast 3 directors and 3 members.

(a)

Decision and Basis of Decision:

1. As number of directors and number of members have reduced below the statutory required number, therefore, casual vacancy of Qasim is required to be filled.
2. Directors have authority to fill casual vacancy, therefore, Abid and Tariq must fill this casual vacancy.
3. Director appointed to fill casual vacancy shall hold office for the remainder of the term of the Qasim (in whose place he is appointed).

(b)

If ASL carries on a business with reduced number of members for more than 180 days, every member who knows this fact i.e. Abid and Tariq, shall be personally liable for debts of the company contracted after 180 days.

Q.8

This statement is not in accordance with Companies Act, 2017 because number of directors once fixed can be changed with prior approval of general meeting in which election is to be held.

Examiners' Comments:

Some of the candidates mentioned that number of directors can be changed by special resolution in the general meeting of the company, in which the directors are to be elected.

Q.9

(a) Ali shall have 80,000 (=10,000 * 8) votes to cast.

(b) He may cast all the votes in favour of any one person or may so distribute as he may like.

Q.10

(a) Adeel, Dawood and Babar will be declared as elected directors.

(b) Although Adeel had got much more votes as compared to Dawood and Babar, he has no superiority over other directors. Adeel, Dawood and Babar shall have one vote each in board meetings.

Q.11

(a)

(i) All applicants shall stand elected unopposed.

(ii) Poll shall be taken for election.

(b) In the context of directors' election, number of votes = number of shares * directors appointed.
Votes needed to become director in this case = Total Votes / number of directors = 10 million * 5/5 = 10 million.
Votes held by Shahid = 2.5 million * 5 = 12.5 million
Therefore, Shahid has requisite shareholding to become a director. He can require the company to hold fresh election.

Q.12

View of company secretary is incorrect.

If a person gets required shareholding to become a director, he may apply company to hold fresh election of directors. Within 30 days of request, company shall proceed to hold fresh election. However, number of directors fixed in preceding election shall not be reduced.

To hold fresh election, a listed company shall follow procedures specified by Commission.

Examiner's Comment
The question was well attempted by majority of the candidates and many of them also secured full marks. The mistakes noted in some of the scripts were as follows:
- *Procedure for election of directors under normal situation was mentioned which was totally different from the requirements of the question.*
- *Instead of mentioning about the approval of SECP, approval of Court was mentioned.*

Q.13

Relevant Legal Provision:
Past acts of a director remain valid, even if subsequently any defect is discovered in his appointment.

Decision and Basis of Decision:
All the acts of Junaid during this period are valid as defect was discovered subsequent to appointment. However, he should not exercise right of his office with immediate effect and any act after this cannot be considered valid.

Q.14

Relevant legal provision:
An elected director will NOT be removed if number of votes against the resolution equals or exceeds **least** number of votes obtained by any elected director in the last election.

Decision and Basis of Decision:
Aslam needs to acquire 1.5 million votes against the resolution to save his seat.

Q.15

Relevant legal provision:
An elected director will NOT be removed if number of votes against the resolution equals or exceeds **least** number of votes obtained by any elected director in the last election.

Decision and Basis of Decision:
Babar needs to acquire 63,000 votes against the resolution to save his seat.

Q.16

Relevant legal provision:
An appointed director will NOT be removed if number of votes against the resolution equals or exceeds following number:
Total Number of Shares of Company * Number of directors appointed at AGM/Number of directors for the time being

Decision and Basis of Decision:
Aslam needs to acquire 2 million votes (=2 million shares * 7/7) against the resolution to save his seat.

Q.17

Removal if Hameed was elected as a director of the company:
An elected director will NOT be removed if number of votes against the resolution equals or exceeds **least** number of votes obtained by any elected director in the last election.

Removal if Hameed was appointed as first director of the company:
An appointed director will NOT be removed if number of votes against the resolution equals or exceeds following number:
Total Number of Shares of Company * Number of directors appointed at AGM/Number of directors for the time being

Examiners' Comments:
Although majority of the candidates correctly stated that the director can be removed by passing a resolution in the members meeting but most of them could not correctly state the number of votes required for such removal, especially in case of removal if a person has become the director of the company by subscribing to the memorandum of association of the company.

Q. 18

Relevant legal provision:

A director can be removed from Board only by members (and not by other directors).

Further, an appointed director will NOT be removed if number of votes against the resolution equals or exceeds following number:

Total Number of Shares of Company * Number of directors appointed at AGM/Number of directors for the time being

Decision and Basis of Decision:

Aga Kirmani will be removed if less than 100,000 votes (= 100,000 shares * 8/8) are casted against the resolution.

Examiners' Comments:

The performance remained below average. Most of the answers were incomplete and confined to the statement that the director can be removed from his office if the number of votes casted against the resolution are less than the minimum number of votes casted in the immediately preceding election of directors; whereas this rule pertains to the removal of directors appointed through election, and not to the directors who were appointed unopposed. Many candidates thought that a director can be removed by passing a resolution in the board meeting.

Marking Plan:

▪ Discussion on number of votes required for removal of a director who was elected unopposed	1.5 marks
▪ Conclusion	0.5 marks

Q. 19

(a)

Is Lalazar in compliance with legal requirement:

An unlisted public company is required to have atleast 03 directors, therefore Lalazar Limited is in compliance as it has 08 directors.

Who fixes number of directors:

Directors fix number of directors to be elected atleast 35 days before the general meeting.

Can company change number of directors:

Yes. Number of directors can be changed by passing resolution in general meeting in which election is to be held.

(b)

Directors have authority to fill casual vacancy. Mr. Aslam's will hold office for remainder of the term of Mr. Javed (the director in whose place he is appointed).

(c)

(i)

Mr. Aslam (director appointed to fill casual vacancy) can be removed by passing resolution in general meeting. However, he shall not be removed if votes against the resolution are equal to or exceed "<u>total number of shares</u> multiplied <u>number of directors appointed</u> / <u>number of directors for the time being</u>" i.e. 10 million * 8 / 8 = 10 million votes.

(ii)

Mr. Bader (elected director) can be removed by passing resolution in general meeting. However, he shall not be removed if votes against the resolution are equal to or exceed least number of votes obtained by a director in last election i.e. 220,000 votes.

Examiners' Comments:

(a) The overall performance on this part of the question was also good. However, few of the students quoted the requirements related to listed company whereas the question related to an unlisted company.

(b) A large number of students attempted and secured full marks on this part of the question. However, some students incorrectly assumed that the term of office of Mr. Aslam shall be three years.

(c) A fairly large number of candidates could not properly express the requirements relating to the removal of directors. Some of the candidates wrongly interpreted the requirements and stated that Mr. Bader can be removed when the votes casted against the resolution for removing him, are less than 350,000 i.e. the number of votes through which Mr. Bader was elected, in the immediately preceding election of directors. The correct answer was that Mr. Badar can be removed from his office only when the votes cast against the resolution are less than 220,000 i.e. the minimum number of votes through which a director was elected in the immediately preceding election of directors.

Q.20

A director shall cease to hold office if he absents himself from three consecutive meetings of the board without seeking leave of absence. Therefore, Kalim is disqualified as director if he did not seek leave of absence from board. If he sought leave of absence, he is qualified.

Examiners' Comments:

Generally the candidates were able to explain that a director ceases to hold office if he fails to attend three consecutive board meetings. However, a number of candidates failed to mention the exception where he obtains leave of absence from the board of directors.

Marking Plan:

▪ Discussion on the relevant provision of the Companies Act, 2017 and the conclusion on the basis thereof	2.0 marks

Q.21

Shareholders of RRL may be referring to following powers of directors related to use of company's funds:

1. To issue shares and debentures, or
2. To borrow money.
3. To make loans.
4. To approve bonus for employees
5. To incur capital expenditure.
6. To undertake obligations under leasing contracts.
7. To authorize a director of the company for entering into transactions with the company.
8. To write-off material debtors, inventories, advances and other assets.
9. To settle material litigations.
10. To take over a company or acquiring controlling stake in another company.

Q.22

Relevant Legal Provision:

Quorum of a listed company is 1/3rd of total number or Four whichever is higher.

Decision and Basis of Decision:

(a) Quorum will be 4 directors.
(b) Quorum will be 6 directors.(by upward rounding off)
(c) The remaining three directors shall be considered valid quorum for filling in casual vacancies.

Q.23

Alternative Course of Action:

HL can pass a resolution through circulation, approved by majority of directors.

Steps:

1. Resolution shall be circulated to all directors alongwith necessary papers.
2. Resolution shall be signed in writing by directors.
3. Once approved, a director cannot revoke his agreement to such resolution.
4. Such a resolution shall be noted in the minutes of subsequent board meeting.

Examiners' Comments:
This was a simple question pertaining to circular resolutions. Although a good performance was expected because such questions have been tested frequently in the past, the overall performance was just average. The common mistakes were as follows:
- *Many candidates only mentioned that a circular resolution may be approved but did not mention the other conditions.*
- *Many candidates mentioned the option of holding a meeting through video conference without realizing that such meeting also required notices to the directors and fulfillment of various other formalities.*
- *Many students mentioned about calling Extra Ordinary General Meeting which was totally incorrect.*

Marking Plan:

▪ Explanation of alternative course of action available to HL	4.0 marks
▪ Explanation of steps required to take by HL	1.0 marks

Q. 24

Relevant Legal Provision:
A company cannot indemnify its officers for expenses incurred by them due to their negligence, violation of legal requirements or breach of duty. Any such agreement will be void.

Decision and Basis of Decision:
This agreement between Aaqil and CL shall be void, as it is the case of default of requirements of Companies Act, 2017.

Q. 25

Relevant Legal Provision:
However, a company may indemnify its officers for expenses incurred by them in defending themselves in a legal proceedings (in relation to company), in which they are proven innocent.

Decision and Basis of Decision:
SSL may indemnify Bilal because case related to affairs of company and Bilal was proven innocent.

Q. 25A

(i) Mohsin can be appointed as non-executive director if he:
- is not a beneficial owner of the company or its associated companies;
- is not in executive management team.
- does not give his whole working time to company, and is not involved in managing the affairs of company.
- does not draw any remuneration from the company except the meeting fee.
- is expected to give an outside viewpoint in decision making by board;

(ii)
A non-executive director is not liable for any act or omission of company unless:
1. act or omission occurred with his knowledge and consent, or
2. he did not act diligently.

Examiners' Comments:
- *Examinees were unaware of the requirement which had to be fulfilled for a person to be appointed as a non-executive director.*
- *Regarding unforeseen liability, the references to law e.g. acts of omission or commission done with his knowledge, through board process, with his consent, etc. were missing in the answers.*

Marking Plan:

(i) Listing the requirement to be ensured to contest the election as non-executive director	4.0 marks
(ii) Describing the grounds when liability may arise on a non-executive director due to adverse action of other directors	2.0 marks

Passing Percentage:
10%

Q.26

AL may grant loan to its director Mr. Majnou if loan has been approved by resolution of members. Further, as AL is a listed company, it will also have to obtain approval of Commission before sanctioning of loan.

Examiners' Comments:

The performance in this part was satisfactory. However, some candidates though correctly stated the purpose(s) for which a loan may be granted, failed to appreciate that a listed company can only grant loan to a whole time director of the company after getting Commission's approval.

Marking Plan:

▪ Key requirement for granting of loan to directors	1.0 marks
▪ 01 mark for discussion of each condition in which AL may grant loan to its director	1.0 marks

Q.27

Remuneration of directors for attending board meetings shall not exceed scale approved by the company or directors in accordance with provisions of the articles of company.

Remuneration of directors for performing extra services, including the holding of office of chairman, shall be determined by board or company in general meeting, in accordance with provisions of articles of company.

Examiners' Comments:

Most of the examinees were unable to discuss the remuneration payable to directors for attending board meeting, performing extra services and the authority who may approve such remuneration.

Marking Plan:

▪ Discussing the provisions relating to the remuneration of the directors for attending the board meeting and performing extra services	2.0 marks

Passing Percentage:
33%

Q.28

(a) This statement is NOT in accordance with the provisions of the Companies Act, 2017 because remuneration of directors for performing extra services, including the holding of office of chairman, shall be determined by board or company in general meeting, in accordance with provisions of articles of company. It shall not be decided by CEO.

(b) This statement is partially correct. A director cannot assign his office to any other person, and such assignments shall be void.

However a director can appoint alternate/substitute director if:

- he is absent from Pakistan for 90 days or more, and
- such appointment is approved by board of directors.

Alternate director shall cease to hold office as soon as director returns to Pakistan.

Examiners' Comments:

(a) Some candidates mentioned that Directors are the approving authority for directors' remuneration while some of the candidates mentioned that company in general meeting is the approving authority. The correct answer is that either of them can be the approving authority, depending upon the provisions contained in the articles of association of the company.
(b) This part was not attempted correctly by the majority.

Q.29

(a) Faisal cannot assign his office to Saeed. However, he can appoint Saeed as alternate director if he is going abroad more than 90 days and such appointment is approved by board of director.

Saeed shall cease to hold office as soon as Faisal returns to Pakistan.

(b)

Relevant Legal Provision:

A company can give loan to its directors, provided it is approved by members.

Decision and Basis of Decision:

Understanding of CEO is wrong. KM Limited can give loan to Mr. Y if loan is approved by resolution of members.

If KM Limited is a listed company, approval of SECP is also required before sanctioning of loan.

Examiners' Comments:

(a) The performance remained average. The most common mistake was that students mixed-up assignment of office by director with appointment of an alternate director or substitute director.

(b) It was one of the most well attempted question and a large number of students scored full marks also. Some students wasted their time by giving additional irrelevant details such as the persons to whom loan cannot be given. The most common mistake was that many students did not state that prior permission of SECP is also required.

Q.30

(a) A director has no responsibility to attend annual general meeting of the company.

(b) If a director absents himself (without leave of absence) for three consecutive board meeting, he shall cease to hold office.

(c) A director cannot assign his office to any other person, and such assignments shall be void ab-initio. However, he can appoint alternate/substitute director if:

- he will be absent from Pakistan for 90 days or more, and
- such appointment is approved by board of directors.

Alternate director shall cease to hold office as soon as director returns to Pakistan.

Q.31

(a) Remuneration of directors for attending board meeting or performing extra services, including the holding of the office of chairman, shall be determined by board or company in general meeting, in accordance with articles of company.

Further, such remuneration shall not exceed scale approved by board or company in accordance with articles of company.

(b)

Mr Dawood can appoint his brother as alternate/substitute director if:

- Dawood is absent from Pakistan for 90 days or more, and
- such appointment is approved by board of directors.

Alternate director shall cease to hold office as soon as director returns to Pakistan.

(c) In following cases, a person can be a director even if he is not a member of the company:

- a whole-time director who is an employee of the company.
- a chief executive
- a person representing a member who is a body corporate or government.
- a person representing a creditor or other special interests through contractual arrangements.

Examiners' Comments:

(a) The performance was good as most of the students correctly explained that the remuneration of directors for performing extra services is determined by the directors or members as per the articles of the company. However, some candidates seemed totally confused and stated that no remuneration can be paid to an independent director.

(b) In this part, the candidates were required to specify the conditions relating to the appointment of alternate director. The overall performance was quite poor probably because the candidates were somewhat confused because the person to be appointed as the alternate director was the brother of the director who was going on vacations. Previously, when the same issue was tested in a simpler situation, the performance was much better.

(c) This was a simple question which was well replied by most of the students.

Marking Plan:

(a) Advice on request to increase the remuneration of director for attending board and sub-committee meetings	2.0 marks
(b) Up to 01 mark for each condition which should be complied with if a director wants to appoint a person as alternate director during his absence from the country	2.0 marks
(c) Up to 01 mark for mentioning each situation under which a director is not required to hold the minimum number of shares specified in the Articles	3.0 marks

Q.32

KL wants to enter into a non-cash transaction with its director. It can do so only if:

1. prior approval of transaction has been obtained by a resolution in general meeting of KL, and
2. notice of resolution includes particulars of arrangement alongwith valuation of asset involved in transaction by a registered valuer.

As Ahmed is also a director in NIL (a holding company of KL), approval of transaction by a resolution in general meeting of NIL is also required.

Q.33

KL wants to enter into a non-cash transaction with a person who is connected with its director. It can do so only if:

1. prior approval of transaction has been obtained by a resolution in general meeting of KL, and
2. notice of resolution includes particulars of arrangement alongwith valuation of asset involved in transaction by a registered valuer.

As brother of Ahmed Laeeq is also a director in KL's holding company, approval of transaction by a resolution in general meeting of NIL is also required.

Q.34

A chief executive is a deemed director, therefore loan given to Mr. Shams becomes payable on his appointment as chief executive unless it is approved by resolution of members.

Further, as Shahzada Limited is a listed company, approval of SECP is also required.

Q.35

Relevant Legal Provisions:

A chief executive is deemed to be a director of company.

Further, a company can give loan to a director if approval has been obtained from members, and Commission (in case of listed company).

Decision and Basis of Decision:

Loan obtained in 2009

Babar must either:

- repay loan, or
- obtain approval from members before appointment as chief executive, .

Fresh Loan:

STL can give loan to Babar if:

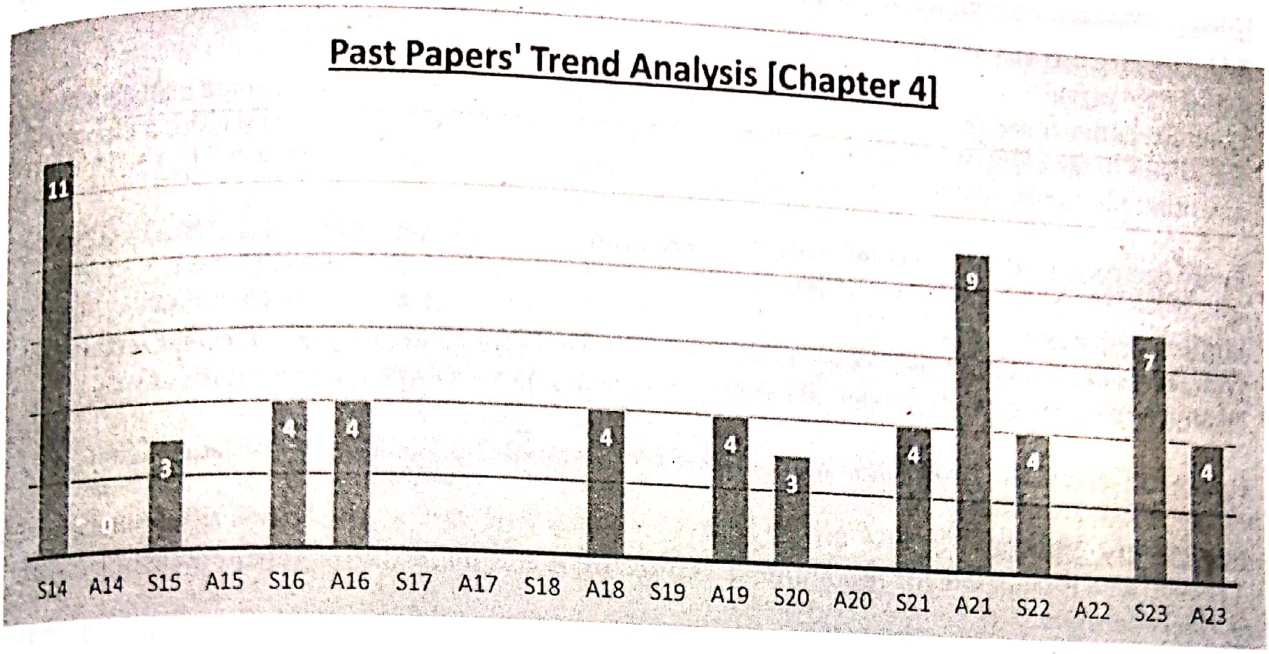
- loan has been approved by resolution of members, and
- approval of Commission is also obtained before sanctioning of loan (in case of listed company).

Examiners' Comments:

Generally the students failed to mention the condition regarding approval of SECP. Most of the students failed to correctly mention the conditions to be complied with regarding the loan that had already been taken by the Chief Executive. Majority of the student were of the opinion that such loan shall have to be repaid. Surprisingly, many students declared that the Chief Executive should inform the company/directors about the loan without realizing that the company itself has granted the loan.

CHAPTER 4
CHIEF EXECUTIVE AND OTHER OFFICERS

LO #	LEARNING OBJECTIVE	ICAP Book Reference	
LO 1	CHIEF EXECUTIVE	4	Section 1
LO 2	CHAIRMAN, SOLE AGENT, COMPANY SECRETARY, SHARE REGISTRAR	4	Section 2
APPENDIX			
APX 1	OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT)		
APX 2	SOLUTIONS TO PRACTICE QUESTIONS		



Overview of the Chapter:

- This is the second of two chapters on management of a company, and primarily deals with Chief Executive.
- This chapter discusses various legal requirements relating to chief executive e.g. appointment, tenure, qualification and disqualification, powers, restrictions.

Examinability of the Chapter: ***(considering latest syllabus and testing by ICAP)***

Although, examiner may ask question from any topic in any way. However, based on my past experience:

- Normally, a question of case study is asked from this chapter. Question of reproduction is rarely tested.
- 3 – 4 marks' question is expected from this chapter in exam.

*In-depth analysis of examinability with particular reference to **Spring 2024 attempt** will be explained in class.*

LO 1: CHIEF EXECUTIVE:

Chief Executive

Chief Executive means an individual who is given the whole or substantial powers of management of the affairs of the company, subject to control and directions of the directors. It includes a director or any other person by whatever name called (e.g. managing director or president).

Every company shall have a chief executive, who is an agent of directors.

Eligibility Criteria:

Companies Act does not specify qualification requirements for chief executive. A chief executive can be any person. He may or may not be a director, shareholder or employee of the company.

However, a company can fix some qualification requirements by including it in articles.

Ineligibility Criteria:

A person who is ineligible for appointment as director, is also ineligible for appointment or continue as chief executive.

Appointment and Tenure of Chief Executive:

First Chief Executive:

1. First chief executive is appointed by subscribers of Memorandum, for a period **upto first AGM** (or for shorter period if fixed by subscribers).
2. He may earlier resign or be removed.
3. Particulars of first Chief Executive shall be submitted to registrar alongwith documents of incorporation.

Government shall have the power to nominate chief executive of a public sector company in such manner as may be specified.

Subsequent Chief Executive:

1. Subsequent chief executive is appointed by directors within **14 days** of election, for a period **upto three years** (or for shorter period).
2. He may earlier resign or be removed.

Casual Vacancy:

- Casual vacancy is filled by directors within **14 days** of its occurrence.
- Such chief executive shall hold office till directors elected in next election appoint a new chief executive.

Roles and Responsibility (or Terms of appointment) of chief executive:

Companies Act has not fixed role and responsibility of a chief executive.

- The terms and conditions of appointment of a chief executive are determined by the directors or the company in general meeting in accordance with articles of company.
- The terms and conditions of appointment of a chief executive nominated by government shall be determined by the Government, in such manner as may be specified.

He reports to the board and cannot exceed his authority given by board.

If a non-director is appointed as chief executive, he will be deemed to be a director and shall have same rights and liabilities.

Rights of Retiring Chief Executive:

1. Retiring chief executive is eligible for reappointment.
2. Retiring chief executive shall continue to perform his functions till his successor is appointed, unless:
    - his office was expressly terminated, or
    - he is the cause of non-appointment of new chief executive.

Removal of Chief Executive:

Irrespective of any provision in articles or agreement with chief executive, Chief Executive of a company can be removed before expiry of his term:

- By directors with **3/4th** majority of **total** number of directors, or
- By company through **special resolution** in general meeting.

Restriction on Chief Executive of a Public Company for Competing Business:

Chief executive of a **public company** (or his spouse or minor children) shall not engage in (i.e. manage or own) any business which competes (i.e. of same nature) with the business carried on by the company or its subsidiary.

At time of appointment, such Chief Executive shall disclose to company in writing nature of such businesses, and his interest therein.

> **Point to Note:**
> - Chief Executive cannot engage in competing business, even after disclosure.

Powers of Federal Government to appoint/remove Chief Executive:

Federal Government has power to:

1. appoint chief executive if majority of directors are appointed by it.
2. remove chief executive if more than 75% of the voting rights are held by it.
3. determine terms and conditions of chief executive appointed by it.

PRACTICE QUESTIONS

Q.1

Faraya Limited (FL), an unlisted public company, is engaged in the business of manufacturing and sale of plastic bottles in Lahore. FL is planning to appoint Gul Maher as the chief executive officer (CEO) of the company. During an interview with Gul Maher, he disclosed to the board that his wife Mona is running a corporate brokerage house in Lahore and that his son Sultan, who is a business graduate, is engaged in the business of selling plastic bottles in Multan.

Under the provisions of the Companies Act, 2017 explain whether FL can appoint Gul Maher as the CEO of the company. **(04)**

(ICAP, CAF 07 Level – Autumn 2018, Q. 9c)
(ICAP Book: Chapter 4 – Practice Question # 01, 10)

Q.2

A team of young engineers is planning to incorporate a private limited company which would provide machine maintenance services to large companies. The company would initially be incorporated with a share capital of Rs. 20 million. However, the engineers are not certain about the following matters:

(a) Registration and signing of articles of association. **(03)**
(b) Appointment of the first and subsequent directors and chief executive and terms of their office. **(07)**

Advise the team of engineers in respect of the above matters in the light of the Companies Act, 2017.

(ICAP, CAF 07 Level – Spring 2020, Q. 6)
(ICAP Book: Chapter 4 – Practice Question # 02)

Q.3

The Board of Directors of Hassam Textiles Limited (HTL) is not satisfied with the performance of its chief executive officer (CEO) and wants to remove him from his office before the expiry of his term on 31 August 2020.

Briefly explain the options available to HTL for removal of CEO under the above situation. **(02)**

(ICAP, CAF 07 Level – Autumn 2019, Q. 7c)
(ICAP Book: Chapter 4 – Practice Question # 06)

Q.4
(a) Mr. Zameer is the first chief executive of Ryan Industries Limited, a public company. The directors of the company are not satisfied with his performance. In view of the provisions of the Companies Act, 2017 specify the term of office of Mr. Zameer and explain how he can be removed before expiry of the above term. **(05)**
(b) Describe the provisions of the Companies Act, 2017 which restrict the chief executive of a public company from carrying on any business competing with the company's business. **(03)**

(ICAP, CAF 07 Level – Spring 2012, Q. 1)
(ICAP Book: Chapter 4 – Practice Question # 09)

Q.5
Tabdily (Pvt) Limited (TPL) has recently been converted into a public listed company and the directors intend to appoint a new Chief Executive of the company.
Under the provisions of the Companies Act, 2017 briefly explain the requirement(s) for the appointment of a Chief Executive. Also state the restrictions, if any, on the appointment of a Chief Executive. **(04)**

(ICAP, CAF 07 Level – Spring 2016, Q. 8a)
(ICAP Book: Chapter 4 – Practice Question # 04)

Q.6
Explain whether or not the following statement is in accordance with the provisions of the Companies Act, 2017. Support your answer with reasons.
A chief executive, other than the first chief executive of the company, is appointed by the shareholders in the annual general meeting of the company, for a period up to the next annual general meeting. **(03)**

(ICAP, CAF 07 Level – Autumn 2010, Q. 4c)
(ICAP Book: Chapter 4 – Practice Question # 03)

Q.7
Board of directors of ABC Limited consists of 12 directors. The chief executive of ABC Limited was appointed for a term of three years. It was specifically mentioned in his contract that he shall not be terminated before the expiry of term of his office. The directors are not satisfied with the performance of the chief executive and want to remove him. Can they remove the chief executive in presence of such clauses in the contract which do not allow his early termination? If so, how?

(ICAP Book: Chapter 4 – Practice Question # 07)

Q.8
In the first meeting of Board of Directors of Hamid Textile Mills Limited (HTML), a listed company, the name of Mr. Imran was proposed for appointment as chief executive of the Company. Mr. Jamal opposed the proposal on the following grounds:
(i) Mrs. Imran is the Chief Executive Officer of Fahad Textile Mills (Private) Limited.
(ii) Mr. Imran is involved in the business of stock brokerage.
(iii) Mr. Imran is not a member of HTML.
Comment on the objections raised by Mr. Jamal in the light of the provisions of the Companies Act 2017.

(ICAP, CFAP 02 Level – Winter 2012, Q. 2a)
(ICAP Book: Chapter 4 – Practice Question # 11)

Q.9
Bravo (Private) Limited (BPL) has two shareholders. All the directors of the company are nominees of these two shareholders. The details are as follows:

Name of shareholders	No. of shares	Nominee directors
Tiara Limited (TL) – listed company	6,030,000	5
Junaid	2,970,000	*3
	9,000,000	8

* including chief executive
TL wants to change the chief executive officer and appoint one of its directors as the chief executive of BPL before the expiry of the term of the office of the existing chief executive.
In the light of the provisions of Companies Act, 2017 advise TL in the above situation. **(03)**

(ICAP, CFAP 02 Level – Summer 2018, Q. 4b)
(ICAP Book: Chapter 4 – Practice Question # 08)

LO 2: CHAIRMAN, SOLE AGENT, COMPANY SECRETARY, SHARE REGISTRAR:

Chairman of a listed company:

1. Board of a listed companies shall appoint a Chairman among **non-executive directors** within **14 days** of election of directors.
2. Chairman shall hold office for **3 years**. However, he may earlier resign, may be removed by directors, or may otherwise cease to hold office.
3. Board shall define the respective roles and responsibilities of Chairman. Chairman shall be responsible for leadership and shall play an effective role in fulfilling responsibilities of board.
4. Chairman shall prepare his **report on overall performance of the board** in achieving its objectives. This review report shall be included in annual financial statements.
5. Commission may specify class of companies for which the Chairman and Chief Executive shall not be the same individual.

Sole purchase, sale or distribution agent:

A company carrying on a business in Pakistan shall not appoint any sole purchase, sale or distribution agent without approval of Commission.

Exception:

A company is not required to obtain approval of Commission if it is incorporated outside Pakistan and its major portion of business is conducted outside Pakistan.

Company Secretary of a Public Company:

A "company secretary" means an individual appointed to perform secretarial and other duties usually performed by a company secretary, having such qualification and experience as may be specified.

Company secretary shall be an employee of the company, and is responsible for advising the board on compliance of corporate laws and maintains relevant records and registers.

Share Registrar for Listed Companies:

Every **listed company** shall have an independent share registrar, with such qualification and functions as may be specified.

Share registrar usually handles the transfer of shares and all other matters as an issuer. Applications of transfer of shares are sent to share registrar, instead of company. Name of share registrar is also mentioned in notice of general meeting.

PRACTICE QUESTIONS

Q.10

Comment whether approval of Commission is required in following cases:

(a) ABC Limited is registered under Companies Act, 2017 and is carrying on business in Pakistan and Middle East. It is considering appointing a sole purchase agent.

(b) ABC Inc. is registered company under the relevant law of USA and is carrying on business in 12 different countries including some business in Pakistan. It is considering appointing a sole sale agent in Pakistan.

(c) XYZ Inc. is registered company under the relevant law of USA and is carrying on business in 3 different countries including major portion of business in Pakistan. It is considering appointing a sole distribution agent in Pakistan.

(ICAP Book: Chapter 4 – Example # 01, 02, 03)

9. A company is incorporated outside Pakistan and conducts major portion of its business in Pakistan. In order to appoint a sole purchase, sale or distribution agent, it shall be required to obtain approval of :
(a) Special resolution
(b) Registrar
(c) Commission
(d) It does not need approval in these circumstances.

10. A company is incorporated outside Pakistan and conducts major portion of its business outside Pakistan. In order to appoint a sole purchase, sale or distribution agent, it shall be required to obtain approval of :
(a) Special resolution
(b) Registrar
(c) Commission
(d) It does not need approval in these circumstances.

Suggested Solution to MCQs:

1	(c)	Any four directors will vote against him
2	(b)	Subsequent Chief Executive shall be appointed within 14 days of the elections of the directors.
3	(a)	Chairman must be from amongst the non-executive directors
4	(c)	Chairman, chief executive, company secretary, chief financial officer
5	(b)	Chairman and Chief executive.
6	(b)	Board of Directors
7	(b)	Public Company
8	(c)	Although being part of the board of directors, he reports to the board of directors.
9	(c)	Approval of Commission is required.
10	(d)	No approval is required.

APX 2: SOLUTIONS TO PRACTICE QUESTIONS:

Q. 1

Relevant Legal Provision:

A person who is disqualified for appointment as director, is also disqualified for appointment as chief executive.

Decision and Basis of Decision:

Spouse of Gul is running a brokerage house:

Appointment of Gul Maher as chief executive of FL is valid, because this disqualification is applicable only for listed companies.

Son of Gul is engaged in competing business:

Appointment of Gul Maher as chief executive of FL is valid, because this disqualification is applicable only for minor child.

Examiners' Comments:

The performance remained average as majority of the answers were incomplete and focused more on the requirements of a listed company. Most of the candidates also failed to appreciate that a competing business is deemed to be indirectly carried on by the CEO if such business is carried on by his/her spouse or minor children. Consequently, candidates could not comprehend that FL was not a listed company and Sultan (Gul Maher's son) was not a minor son of Gul Maher and therefore he was eligible for appointment as FL's CEO.

Marking Plan:

▪ Mentioning the relevant provisions for the appointment of company's CEO	3.0 marks
▪ Conclusion	1.0 marks

Q. 2

(a)

Registration of Articles of Association:

Articles are required to be registered for a company limited by guarantee or unlimited company.
A company limited by shares may either register its own articles or may adopt Table A as its articles.

Signing of Articles:

Articles shall be signed by subscribers, in the presence of a witness.

(b)

First and Subsequent Directors:

1. First directors shall be appointed by subscribers of memorandum, and they shall hold office till the election of directors in the first AGM.
2. Subsequent directors shall be elected by members at general meeting, and they shall hold office for a period of three years.

First and Subsequent Chief Executive:

- First chief executive is appointed by subscribers of Memorandum, for a period upto first AGM (or for shorter period if fixed by subscribers).
- Subsequent chief executive is appointed by directors within 14 days of election, for a period upto three years (or for shorter period).

Q.8

(i) Mr. Jamal's opinion is correct as spouse of a chief executive cannot engagement in a business which competes (i.e. of same nature and in same market) with the business carried on by the company. As spouse of Imran is engaged in textile business, Imran cannot be appointed as chief executive of Hamid Textile Mills Limited.

(ii) Mr. Jamal's opinion is correct as, in case of a listed company, a person is disqualified for appointment as director and chief executive if he is engaged in the stock brokerage business.

(iii) Mr. Jamal's opinion is incorrect because a person can be appointed as chief executive even if he is not a member of the company.

Examiners' Comments:

- *Many students did not read this portion carefully and presumed that Mr. Imran was being proposed for appointment as Chief Executive of both the companies whereas according to the question, Mr. Imran was proposed to be appointed as the CEO of a textile mill whereas Mrs Imran was the CEO of the other textile mill.*
- *Some of the students were of the view that only members of the stock exchange are restrained from becoming the Chief Executive Officer of a listed company. In fact, the restriction applies to all persons who are engaged in the business of brokerage.*
- *A significant number of students held the incorrect view that only a member of the company can become its CEO.*
- *Many students gave the final decisions but did not support them with logical reasoning.*

Q.9

Relevant Legal Provision:

Chief Executive of a company can be removed before expiry of his term either by:

- Directors with three-fourth majority, **or**
- Company through special resolution.

Decision and Basis of Decision:

Therefore, the Chief Executive of BPL can be removed if TL gets support of:

(a) 6 directors, or
(b) Special resolution in general meeting.

Currently TL has power of 5 directors and 67% shareholding, therefore it cannot remove chief executive in the current situation, unless support from other director or shareholder is obtained.

Examiners' Comments:

The performance remained poor as most of the students only knew that the chief executive may be removed by passing a special resolution. Only few mentioned the other possibility i.e. by a resolution passed by not less than three fourth of the total number of directors. Further, many students only quoted the related provision without applying them to the given situation. Further, many students were of the opinion that the Chief Executive can be removed with simple majority of the directors.

Marking Plan:

▪ Discussion on conditions for removal of chief executive	2.0 marks
▪ Conclusion	1.0 marks

Q. 10

(a) It must obtain approval of the Commission for the appointment.
(b) It need not obtain approval of the Commission for the appointment.
(c) It must obtain approval of the Commission for the appointment.

Q.11

Which directors are eligible to be appointed as Chairman of the board:

Chairman of Board of a listed company shall be from non-executive directors or independent directors (as independent directors are also non-executive). Hence, following persons can be appointed as Chairman:

- Salman, Arif, Ashraf or
- Khalid, Dawood, Rehmat.

Time frame for appointment of chairman:

Chairman shall be appointed within 14 days of election of directors.

Duration of office for appointment of chairman:

Chairman shall hold office for 3 years. However, he may earlier resign, may be removed or may otherwise cease to hold office.

Responsibilities of Chairman:

- Board shall define the respective roles and responsibilities of Chairman.
- Chairman shall include his report on overall performance of the board in achieving its objectives. This review report shall be included in annual financial statements.

Examiners' Comments:

Candidates faced difficulty in determining that all the directors were eligible to be appointed as Chairman with the exception of Fasih and Kashif, since they were the only executive directors of the company.

Marking Plan:

• Identifying the directors who are eligible to be appointed as the Chairman	1.0 marks
• Specifying the prescribed time frame for Chairman's appointment	1.0 marks
• Comment on duration of Chairman's office	1.0 marks
• Describing the Chairman's responsibilities	3.0 marks

Passing Percentage:

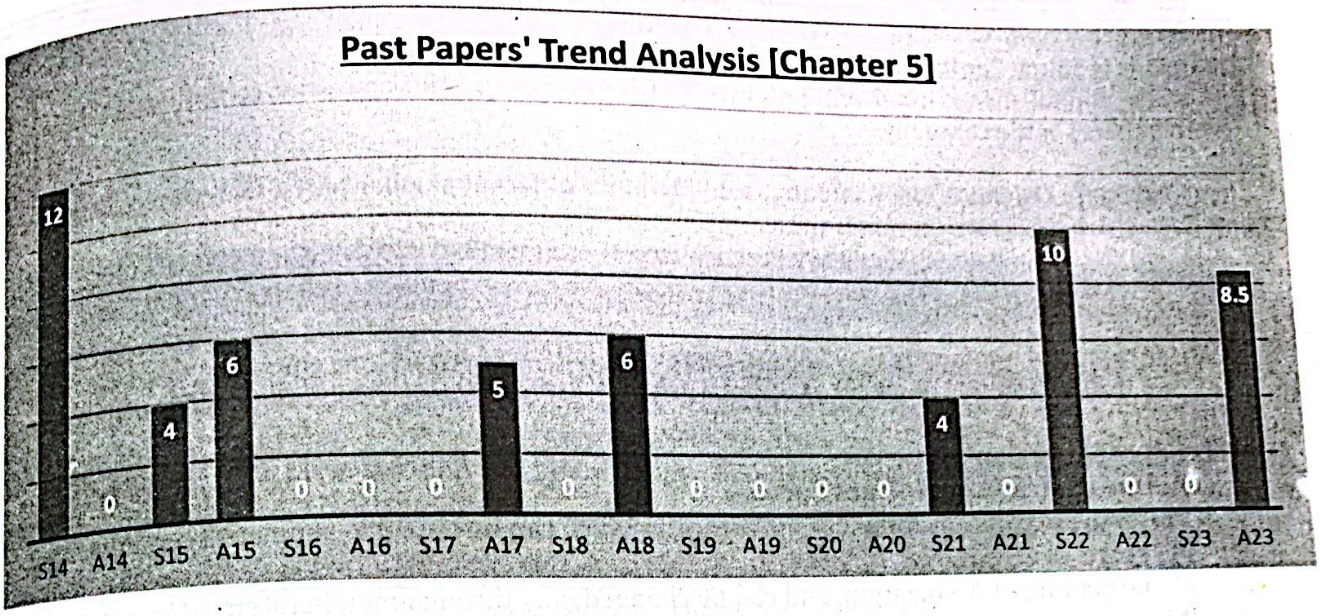
21%

CHAPTER 05
SHARE CAPITAL

LO #	LEARNING OBJECTIVE	ICAP Book Reference	
		Chapter #	Paragraph #
LO 1	SHARE CAPITAL AND ITS TYPES	5	1.1, 1.2
LO 2	ALTERATION OF CAPITAL CLAUSE IN MEMORANDUM	5	Section 2
LO 3	SHARES, AND ITS TYPES	5	1.1, 1.3
LO 4	RIGHTS AND LIABILITIES OF SHARE	5	N/A
LO 5	VARIATION IN RIGHTS OF SHAREHOLDERS	5	1.4, 1.5

APPENDIX

APX 1	OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT)
APX 2	SOLUTIONS TO PRACTICE QUESTIONS



Overview of the Chapter:

- ☐ This chapter discusses Share Capital, Shares and their Types.
- ☐ Further, this chapter discusses how a company can alter its share capital, or vary rights of shareholders.

Examinability of the Chapter: ***(considering latest syllabus and testing by ICAP)***

Although, examiner may ask question from any topic in any way. However, based on my past experience:

- Usually, a question of reproduction is asked from this chapter.
- 4 – 5 marks' question is expected from this chapter in exam.

*In-depth analysis of examinability with particular reference to **Spring 2024 attempt** will be explained in class.*

LO 1: SHARE CAPITAL AND ITS TYPES:

What is Share Capital:

Share capital means total amount invested by owners of the company (called shareholders or members) in the company.

Total Share Capital of the company is divided into different smaller parts, which are called shares. Each share has a face/nominal value.

- Nominal value is the face value of share. It is also called par value and stated value.
- Market value is the value at which shares are traded at stock exchange.

Share capital of a company is usually expressed in following terms:

100,000 shares of Rs. 50 each (face value) = 5,000,000 (total amount of Share Capital)

Types of Share Capital:

1. **Authorized/Nominal Share Capital:**
   This is the maximum amount of share capital which **can be** issued to people. All companies limited by share are required to have an authorized share capital. This amount is mentioned in Memorandum of Association, and can be changed only through members' special resolution.
   It is expressed in terms of the nominal value of the shares.

2. **Issued/Allotted Share Capital:**
   Issued share capital is that part of authorized share capital which **has been** issued to shareholders. Issued share capital can be less than or equal to authorized share capital but cannot exceed it. Directors can issue share capital without approval of members, provided it does not exceed Authorized Share Capital.

3. **Paid-up Share Capital:**
   It is that part of share capital which has been paid by public. Earlier, there was permission to issue partly paid shares, but now companies can issue only fully paid shares. Therefore, in most cases, paid-up share capital will be equal to issued share capital.

Publication of Authorized and Paid-up Capital:
Whenever a company mentions its authorized share capital in a notice, advertisement or in any statement, it shall also mention its issued share capital at equally prominent position. Penalty for default @ Level 1.

Process of issuing Share Capital to General Public

1. Company prepares prospectus. This prospectus includes information about company, application to subscribe (i.e. purchases) share capital, and deadline to apply. Company obtains approval from Commission and clearance from Exchange to issue prospectus to general public.
2. After approval, company issues prospectus to general public and simultaneously apply to stock exchange for listing of shares.
3. Interested people submit application, and pay amount into specified bank accounts. This is called **'subscription'** of shares.
4. If minimum subscription is achieved and listing is approved by stock exchange, shares are issued to applicants. This is called **"allotment"** or **"issue"** of shares.
   a. If applications are less than minimum subscription or certificate of listing is not obtained from stock exchange, money is returned to applicants. Company cannot commence business until such money is returned.
   b. If applications are more than offered share capital, balloting is done.

(ICAP Book: Chapter 6 – Example # 03)

PRACTICE QUESTIONS

Q.1
ABC Limited, a public company has authorised share capital of Rs. 8,000,000 divided into 800,000 ordinary shares. The issued share capital is 400,000 ordinary shares. All of these, 400,000 shares are fully paid.
(a) What is the nominal value of each share.
(b) What is the liability of shareholders in the event of winding up of company?

(ICAP Book: Chapter 5 – Example # 01)

LO 2: ALTERATION OF CAPITAL CLAUSE IN MEMORANDUM

Procedure to alter the authorized share capital:

1. A company having share capital can alter its share capital if authorized by its articles.
2. A special resolution is passed by company in general meeting to alter authorized share capital.
3. Company shall file resolution and altered copy of memorandum to Registrar within **15 days** of passing the special resolution.

Ways in which authorized share capital may be altered:

A company limited by share can alter its authorized share capital clause in following ways:

1. increase the amount of authorized share capital, or
2. cancel the shares which have not been taken up by any person, and reduce share capital by amount cancelled.
3. sub-divide shares into amounts smaller than existing shares.
4. consolidate and divide shares into amounts larger than existing shares.
5. sub-divide the authorized share capital into Ordinary shares and Preference shares.

In the case of consolidation or sub-division of shares, the rights attaching to new shares shall be strictly proportionate to rights attached to previous shares i.e. sub-division/consolidation shall not affect rights of shareholders.

Study Tip
Only a listed company can buy back its own shares (i.e. shares which have been taken up by public).

PRACTICE QUESTIONS

Q.2
ABC (Pvt) Limited has got an authorised ordinary share capital of Rs. 500 million divided into 5 million ordinary shares of Rs. 100 each, out of total authorised capital Rs. 200 million is already paid up.
(a) Can company sub-divide its share into shares of Rs. 10 each? Will shareholders' rights increase or decrease after conversion of shares into smaller amount?
(b) Company did not register preference share capital at time of incorporation, however, it wants to register preference shares of Rs. 250 million now. Can it do so?

(ICAP Book: Chapter 5 – Example # 04, 05)

Q.2A
JKL Limited has authorised and paid up share capital of Rs. 500 million divided into 5 million shares of Rs. 100 each. In order to increase the marketability of the company's shares, the board of directors suggested the sub-division of shares into shares of smaller par value of Rs. 10 each without changing the total paid up value of the share capital. A special resolution to this effect was passed by the company in its annual general meeting held on 24th October 2022.
When and to whom JKL must file documents relevant to special resolution?

(ICAP Book: Chapter 5 – Example # 06)

Q.3
The directors of Sherwani Limited wish to increase the authorized capital of the company from Rs. 100 million to Rs. 200 million. You are required to inform them about the relevant provisions regarding increase in authorized capital, contained in the Companies Act, 2017. (03)

(ICAP, CAF 03 Level – Spring 2008, Q. 8b)
(ICAP Book: Chapter 5 – Practice Question # 05)

Q.4
Saga Limited (SL), a listed company, has two classes of ordinary shares i.e. Class A and Class B. In order to attract foreign investors, the directors intend to issue a new class of ordinary shares i.e. Class C, with no voting rights. Currently SL's memorandum and articles of association do not contain such class of share.
Under the provisions of the Companies Act, 2017 briefly describe the steps which the directors should take prior to issuance of Class C shares. (Procedure for issuance of shares is not required). (04)

(ICAP, CAF 03 Level – Autumn 2018, Q. 6b)
(ICAP Book: Chapter 5 – Practice Question # 01)

LO 3: SHARES, AND ITS TYPES:

Share:
Total Share Capital of the company is divided into many smaller parts, which are called shares.

Following points describe nature and characteristics of Shares:

1. A share is a form of **movable property**, carrying rights and obligations.
2. A share is **transferable** from one person to another, as per Articles.
3. It must be **fully paid.**
4. Every share has a **distinctive number.**
5. Main evidence of title/ownership of shares in a company is **Share Certificate** issued in:
   - **physical form** under signature of authorised officer of the company, or
   - issued in **book-entry form** (i.e. electronic)

   Manner of issue of a certificate of shares, form of such certificate and other matters may be specified in articles.

Kinds and Classes of Shares:
A company can have different kinds and classes of shares as provided in its memorandum and articles.

Kinds of Shares:
A company **may** sub-divide its authorized share capital into following kinds:

1. Ordinary Shares (or Equity shares), and
2. Preference Shares

Difference between Ordinary Shares and Preference Shares:

	Ordinary/Equity Shares	Preference Shares
Voting rights	Ordinary shareholders have right to attend and vote at general meetings. Different classes of ordinary shares may have different voting rights.	Preference shares do not have rights to attend and vote at general meetings (except on certain matters mentioned in Articles).
Dividend Rights	They receive dividend from residual profit, after payment of preference dividend.	They have preference right to receive dividend before making payment to ordinary shareholders.
Repayment on winding up	They receive repayment on winding up after all creditors and preference shares are paid.	They have preference right to receive repayment of capital on winding up before making payment to ordinary shareholders.
Basis of different classes	Ordinary shares may have different classes on the basis of different voting and other rights.	Preference shares may have different classes on the basis of accumulation of dividend, redemption or conversion of shares.

Classes of Shares:

In each kind of shares, company may have different classes of shares e.g. Class A, Class B.

- Nominal amount and rights of all shares within a class must be same. However, rights of a class may be different from other classes.
- Rights attached to each class are mentioned in Articles.

LO 4: RIGHTS AND LIABILITIES OF SHARE:

Rights of shareholders:

Different classes of shares may have different rights. Usually rights of shareholders include:

1. Right to receive dividend.
2. Right to receive notice, and attend general meeting.
3. Entitlement to Right issue and bonus issue.
4. Voting rights.

These rights may be varied subsequently.

Liability of shareholders:

Liability of shareholders is limited up to the unpaid amount on their shares at time of winding up i.e.

1. If shares are fully paid, shareholders will have no further liability.
2. If shares are partly paid, shareholders will be liable to pay unpaid amount.

PRACTICE QUESTIONS

Q.5

The ordinary shares in a company are divided into 500,000 shares, all of Rs.10 each.

(a) Can it have more than one classes of ordinary shares?

(b) Can it have different rights for different ordinary shares?

(ICAP Book: Chapter 5 – Example # 02, 03)

LO 5: VARIATION IN RIGHTS OF SHAREHOLDERS

What variations are possible in rights of shareholders:

Shareholders have different rights. However, these rights may be varied for different classes e.g.

1. Different voting rights (e.g. voting rights disproportionate to paid up value of share, or no voting rights at all).
2. Different rights for entitlement of dividend, right shares, bonus shares.
3. Different rights to receive notice and attend general meetings.
4. Different rights for redemption or conversion of shares.

These rights may be for a limited specified period, or for indefinite period.

How to vary the rights of shareholders:

1. Rights of shareholders can be varied by alteration of articles of association by passing special **resolution.**
2. If such alteration affects the substantive rights or liabilities of a certain class of members, it shall be carried out only if a **3/4th majority of the affected class** also votes for such alteration.
3. A copy of the altered articles shall be filed with registrar within **30 days** from the date of passing of the resolution.

<u>How to Cancel the Variation:</u>

1. Appeal against resolution:
10% or more members of affected class can apply to **Court** for cancellation of resolution within **30 days** of resolution. Application can be made by one or more members authorized in writing on behalf of others.

2. Order of Court:
Court shall pass an order to cancel resolution only if it is proved that:
1. Some material facts were withheld by the company to get resolution passed. If members had been in knowledge of those facts, they would not have passed the resolution, or
2. Variation in rights would unfairly prejudice the shareholders of affected class.

Decision of **Court** on this matter shall be final and an appeal cannot be filed against such decision.

Company shall forward a copy of order of Court to Registrar within **15 days of receipt of order.**

PRACTICE QUESTIONS

Q.6
Paradise Limited, upon passing a special resolution on August 20, 2010 made amendments in its Articles of Association affecting substantial rights associated with class "B" shares of the company. Few aggrieved shareholders having objection on the special resolution intend to file an application in the Court, for the cancellation of the above resolution.

Discuss the relevant provisions of the Companies Act, 2017 specifying the following:
(a) The conditions which the aggrieved shareholders will have to comply with, to be eligible for filing an application in the court for the cancellation of the above resolution. **(02)**
(b) The matters which the Court would consider while making a decision on the above application. **(02)**

(ICAP, CAF 03 Level – Autumn 2010, Q. 14)
(ICAP Book: Chapter 5 – Practice Question # 03)

Q.7
The directors of Pioneer Shipping Limited have decided to issue Class B ordinary shares which would have different rights and would be issued to a group of investors. The existing paid up capital will be classified as Class A shares.
(a) In the light of Companies' Share Capital (Variation in Rights and Privileges) Rules, 2000 explain the following:
(i) Validity of directors' resolution regarding the issuance of Class B shares. **(02)**
(ii) The nature of variation in the rights and privileges that may be attached to different classes of shares. **(05)**

(b) Ahmed and Faraz holding 9% and 10% shareholdings respectively, do not agree with the issuance of class B shares as in their opinion this would adversely affect their interest, though a majority of the members are in favour of the resolution. In the light of the provisions of the Companies Act, 2017 advise the course of action which Ahmed and Faraz should take in respect of the above. **(04)**

(ICAP, CFAP 02 Level – Summer 2018, Q. 2)
(ICAP Book: Chapter 5 – Practice Question # 02)

APX 1: OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT):

Select the most appropriate answer from the options available for each of the following Multiple Choice Questions. Each MCQ carries ONE mark. These questions are adapted from ICAP's Study Text.

1. In a company limited by shares, the share capital represents capital introduced into the company by the company's
(a) Directors
(b) Guarantors
(c) Auditors
(d) Members

2. Issuance of shares is the first step of offering shares by the company, then people or promoters pay for the shares this is termed as
(a) Subscription of shares
(b) Transfer of shares
(c) Payment of shares
(d) Selling of shares

3. The issued share capital is the nominal value of the shares that have been issued to shareholders. The issued share capital
(a) May be more than the authorized share capital
(b) Must be more than the authorized share capital
(c) May be less than the authorized share capital
(d) Must be equal to the authorized share capital

4. In Pakistan, all companies limited by shares are required to have an authorized share capital and the amount of the authorized share capital can be increased but
(a) Only with the approval of the directors
(b) Only with the approval of the shareholders
(c) Only with the approval of the registrar
(d) Only with the approval of the creditors

5. When the shares are issued, the shareholders must
(a) Give their consent in written form
(b) Appoint two persons as their proxy
(c) Pay for the shares in full
(d) Apply for special privileges

6. If the company goes into liquidation with unpaid debts, the shareholders will
(a) Be liable personally to contribute in the company's debts
(b) Not be required to contribute in the company's debts
(c) Be liable to contribute 50% of the unpaid debts
(d) Be liable to contribute 75% of the unpaid debts

7. Ordinary shares are also called
(a) Equity shares
(b) Bonus shares
(c) Founders shares
(d) deferred Shares

8. The ordinary shareholders are entitled to vote at general meetings of the company. Normally all ordinary shareholders have
(a) Ten votes per share
(b) One vote per ten shares
(c) One vote per share
(d) As mush vote as they wish

9. A preference share normally carries as prior right (ahead of ordinary shares) to
(a) Receive a salary which is normally a fixed amount each year
(b) Receive a repayment of capital in the event of winding up
(c) Vote in the general meeting
(d) None of the above

10. What type of resolution is required to alter the capital clause of memorandum of association
(a) Ordinary resolution
(b) Special resolution
(c) Ordinary resolution of 30 days' notice
(d) Special resolution of 30 days' notice

11. After the alteration in capital clause of MOA, the company is required to file the resolution and the related documents with the registrar within
(a) 15 days
(b) 30 days
(c) 60 days
(d) 90 days

12. If the variation affects the substantive rights of any particular class of shareholders, it shall not be deemed to have been carried out unless
(a) Two third majority of that particular class agree to the alterations.
(b) Fifty one percent majority of that particular class agree to the alterations.
(c) Three fourth majority of that particular class agree to the alterations
(d) Seventy percent majority of that class agree to the alterations

13. Any member or members of the affected class representing at least 10 percent shareholding of that class may apply for an order against the resolution varying their rights. They will apply to
(a) The registrar
(b) The commission
(c) The board of directors
(d) The Court

14. In case of variation in shareholders' rights of a particular class of members, 10% or more of the class of shareholders who are aggrieved by the variation of their rights may apply to the court, for an order cancelling the variation within
(a) 14 days
(b) 21 days
(c) 30 days
(d) None of the above is correct

15. In case of variation in shareholders' rights of a particular class of members, the court may give its decision in favour or against the special resolution by the company. The company is required to forward a copy of the court decision to the registrar within
(a) 14 days of receipt of the order
(b) 15 days of receipt of the order
(c) 30 days of receipt of the order
(d) None of the above is correct

SUGGESTED SOLUTIONS

1.	(d)	The members are the shareholders of the company. They are also the owners of the company.
2.	(a)	When people or promoters pay for the shares, this is termed as subscription of shares then finally shares are allotted to respective names of applicants.
3.	(c)	The issued share capital may be less than the authorized share capital, but cannot exceed it.
4.	(b)	The amount of the authorized share capital has to be specified in the company's memorandum of association and it can be increased only with the approval of the shareholders.
5.	(c)	When the shares are issued, they must be paid for in full.
6.	(b)	If the company goes into liquidation with unpaid debts, the maximum amount they will lose is the amount already contributed as share capital.
7.	(a)	The ordinary shareholders are the owners of their company and ordinary shares are often called 'equity shares'.
8.	(c)	Normally, all ordinary shareholders have one vote per share.
9.	(b)	A preference shareholder has a prior right to receive repayment of capital in the event of winding up of the company.
10.	(b)	The company, if allowed by the articles and by passing a special resolution can alter the capital clause of its memorandum.
11.	(a)	The company is required to file the amended copy of the MOA with the registrar within 15 days of passing the resolution.
12.	(c)	Three fourth majority of that particular class must agree to the alteration, in order to make that variation valid.
13.	(d)	Any member or members of the affected class may apply to the court for an order against the resolution.
14.	(c)	The person aggrieved by the change may file an application within 30 days of passing of the resolution.
15.	(b)	The company is required to file a copy of the court to the registrar within fifteen days of the receipt of the order.

APX 2: SOLUTIONS TO PRACTICE QUESTIONS:

Q.1

(a) The nominal value of the shares is Rs.10 per share (=8,000,000/800,000).
(b) The maximum liability of the shareholders for the unpaid debts of the company, in the event of the company's liquidation, is zero as all of the nominal value is fully paid.

Q.2

(a) The company may alter this capital by special resolution and declare that the authorised and paid up share capital of the company is Rs. 500 Million but now it is divided into 50 million shares of Rs. 10 each. This is division of capital into shares of a smaller amount than originally fixed by the memorandum. Every member possessing one share shall now possess 10 shares but overall paid up value of shares will remain the same.

The rights attaching to the new shares shall be strictly proportional to the rights attached to the previous shares i.e. sub-division of shares shall not affect the rights of shareholders.

(b) ABC can now register preference shares by altering its authorized share capital clause it can do so either by:

(i) increasing the authorized share capital to Rs. 750 million (divided into Ordinary shares of Rs. 500 million and Preference Shares of Rs. 250 million), or

(ii) sub-divide the authorized share capital into Ordinary Shares of Rs. 250 million and Preference Shares of Rs. 250 million (unissued shares are converted to preference shares, total authorized share capital will remain same in this case).

Q.2A

JKL Limited must file the copy of such special resolution and altered copy of memorandum with the registrar by 7th November 2022 (i.e. 15 days from the date of passing the resolution).

Q.3

1. A company limited by shares can alter its share capital if authorized by its articles.
2. A special resolution is passed by company in general meeting to alter authorized share capital.
3. Company shall file notice of alteration with Registrar within 15 days of passing the special resolution.

Note for Students: In Official Question Bank of ICAP, irrelevant material is also discussed in solution e.g. ways of alteration of share capital, and concept relating to consolidation and subdivision which are not required in question.

__Examiners' Comments:__
The answer to this rather straight forward question regarding increase in the amount of authorized capital is contained in Companies Act, 2017. The performance in this easy question was far below expectations. The candidates spent considerable time in discussing the procedure for increase in the paid-up capital which was not required.

Q.4

1. Company will have to alter both Memorandum and Articles of Association:
2. Directors will call meeting of members, and special resolution shall be passed to alter memorandum and articles.
3. Notice of alteration shall be filed with Registrar within 15 days of resolution.
4. If such alteration affects the substantive rights of a certain class of members, it shall be carried out only if a three-fourth majority of the affected class also votes for such alteration.

__Examiners' Comments:__
Performance in this part was below average. Majority of the answers were only confined to the statement that SL's memorandum and articles of association needs to be amended and that an altered copy of memorandum is required to be filed with the registrar. Majority of the candidates failed to specify that if alteration affects substantive rights or liabilities of members or a class of members, then it can be carried out only if majority of at least three-fourth of such members exercise the option through vote either personally or through proxy. Further, in spite of clear instructions in the question that procedure of issuance of shares is not required, many candidates wasted their time writing procedure for issuance of shares.

Marking Plan:	
▪ Describing the steps which the directors should take prior to issuance of Class C shares	4.0 marks

Q.5

(a) A company limited by shares may have different kinds (ordinary and preference etc.) of share capital and various classes (class A, class B etc.) under each kind.

(b) If a company has different classes of shares, each class of shares may have different rights. However, within the same class, shares cannot have different nominal amounts or different rights.

Q.6

(a)

1. Aggrieved shareholders must have atleast 10% of affected class (Class B's) total share capital.
2. Aggrieved shareholders must apply to court within 30 days of the resolution.

(b)

Court will consider whether:

1. Some material facts were withheld by the company to get resolution passed. If members had been in knowledge of those facts, they would not have passed the resolution, or
2. Variation in rights is harmful to the interest of members.

Q.7

(a)

(i) Directors can issue different classes of shares only if they are registered in memorandum and articles. If they are not registered, then directors' resolution is invalid, and they will have to alter authorized capital clause in memorandum and articles.

(ii) Variation in shareholders' rights may be of following nature:

1. Different voting rights (e.g. voting rights disproportionate to paid up value of share, or no voting rights at all).
2. Different rights for entitlement of dividend, right shares, bonus shares.
3. Different rights to receive notice and attend general meetings.

These rights may be for a limited specified period, or for indefinite period.

(b)

Ahmed and Faraz both represent affected class and have atleast 10% shareholding, therefore, they can get the resolution cancelled if they apply to Court within 30 days of passing the resolution and it is provide that:

1. Some material facts were withheld by the company to get resolution passed. If members had been in knowledge of those facts, they would not have passed the resolution, or
2. Variation in rights is harmful to the interest of members.

<u>*Examiners' Comments:*</u>

(a) The performance remained average. Very few students knew that directors' resolution would only be valid if the variation in rights is specifically allowed under the Articles and Memorandum of Association. However, most of them were able to write the different types of variations that may be attached to the different classes of shares. The most common omission in this regard was that the provision related to different voting rights was missed.

(b) The performance was satisfactory. However, some students used the term voting rights instead of shares. Further, many students were of the view that petition in this regard had to be filed with SECP instead of the Court.

Marking Plan:

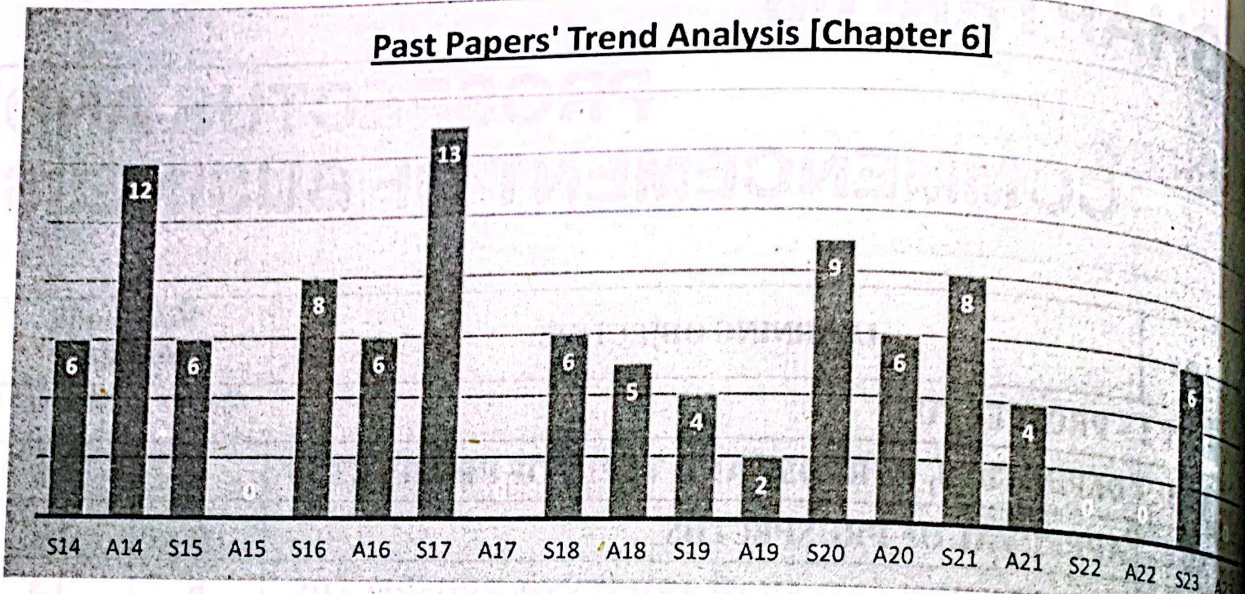
(a)		
(i)	▪ Explanation of validity of directors' resolution regarding the issuance of Class B shares	1.5 marks
	▪ Conclusion	0.5 marks
(ii)	▪ Up to 02 marks for explanation of each nature of variation in voting rights and privileges	5.0 marks
(b) Discussion on course of action available to Ahmed and Faraz		4.0 marks

Passing Percentage:
59.4%

CHAPTER 06

PROSPECTUS AND COMMENCEMENT OF BUSINESS

LO #	LEARNING OBJECTIVE	ICAP Book Reference	
		Chapter #	Paragraph #
PART 1 – PROSPECTUS			
LO 1	DEFINITION, PURPOSE AND TYPES OF PROSPECTUS	6	1.1
LO 2	APPROVAL OF PROSPECTUS	6	1.2
LO 3	PUBLICATION AND AVAILABILITY OF PROSPECTUS	6	1.3
LO 4	USE OF EXPERT STATEMENT IN PROSPECTUS	6	1.4
LO 5	OFFENCE AND LIABILITY FOR MISSTATEMENT IN PROSPECTUS	6	1.5
PART 2 – COMMENCEMENT OF BUSINESS			
LO 6	CERTIFICATE OF COMMENCEMENT OF BUSINESS	6	Section 2
APPENDIX			
APX 1	OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT)		
APX 2	SOLUTIONS TO PRACTICE QUESTIONS		



Overview of the Chapter:

- ☐ This chapter discusses procedures for Approval and Issue of Prospectus to general public.
- ☐ Use of Expert, and Certificate of Commencement of business is also discussed in the chapter.

Examinability of the Chapter: ***(considering latest syllabus and testing by ICAP)***

Although, examiner may ask question from any topic in any way.

- Usually, case study is set from topic of approval and issue of prospectus. However, based on my past experience: A question of reproduction is tested from topics of use of expert and certificate of commencement of business.
- 6 – 8 marks' question is expected from this chapter in exam.

In-depth analysis of examinability with particular reference to ***Spring 2024 attempt*** *will be explained in class.*

PART 1 – PROSPECTUS

LO 1: DEFINITION, PURPOSE AND TYPES OF PROSPECTUS:

Definition of Prospectus:

Prospectus means any document (e.g. notice, circular, publication) which is issued as prospectus, inviting offers from public for subscription of securities (i.e. shares and debentures) of a listed company. However, followings are not considered Prospectus:

- Invitations by bank to make deposits, and
- Certificate of investments/deposit issued by non-banking finance companies.

Purpose of Prospectus:

Purpose of prospectus is to invite general public to subscribe for securities of a listed company. However, prospectus is not required if securities are issued through private arrangements.

Contents of Prospectus:

Prospectus provides general public with all information about company which is relevant for making decision of investment in the company. It also contains such information as may be specified by Commission e.g.

- particulars of directors,
- earning of previous years,
- Risk Factors (readers are specifically advised to read risk factors before making investment).

Timing of Prospectus:

A company can issue prospectus any time **after** its incorporation (even before commencement of business). Prospectus expires after a certain period of time (unlike memorandum/articles which are permanent documents).

Multiple Offers and Prospectus:

Shelf-Prospectus:

This is a single document which allows companies to make multiple offerings (as disclosed in the document), within a prescribed time and subject to prescribed conditions.

Supplement to Shelf-Prospectus:

If securities are offered through shelf-prospectus and there is a change in disclosures or other information, a supplement is issued on subsequent subscription from public to provide updated disclosures.

LO 2: APPROVAL OF PROSPECTUS:

Who can approve:

A prospectus must be:
- approved by Commission, and
- cleared by stock exchange (on which securities are listed).

For approval from Commission, Company applies to Commission atleast **21 days** before proposed date of publication.

Exceptions for Approval:

Approval of prospectus is **NOT required** in following cases:
1. If securities are offered through private offering or **private placement**, or
2. If securities are **offered to members** or their family members, or
3. If securities are **offered to employees** of the company or their family members, or
4. If shares are issued as **bonus shares** to members of the company, or
5. If a listed holding company issues shares in its subsidiary company to its members as **dividend**, or
6. If securities are offered by **State Bank of Pakistan.**

Validity of Approval:

Approval of Commission will be valid for **60 days** from date of approval. However, this period may be extended by Commission on reasons to be recorded in writing.
In case of shelf-registration, a **longer period** may be approved by Commission.

Filing of Prospectus with Registrar:

Issuer company is also required to file a copy of Prospectus **on or before** the date of publication to Registrar. This copy should be signed by every person who is named as director or proposed director of the company.
Penalty for violation is @ Level 2.

PRACTICE QUESTIONS

Q.1
Under the provisions of the Securities Act, 2015 no person shall make a public offer of securities unless the Commission has approved the prospectus submitted by the issuer or offeror of the securities.
Discuss the exceptions to the above provision of the Securities Act, 2015. **(04)**
(ICAP, CAF 07 Level – Spring 2020, Q.7b)
(ICAP Book: Chapter 6 – Practice Question # 01)

Q.2
The Board of Directors of Tanveer Limited, a listed company, has decided to invite general public for the subscription of its securities and therefore, intends to issue/publish a prospectus.
Under the provisions of the Securities Act, 2015 advise the directors about the time frame within which approval for the issuance of prospectus may be obtained and the time for which the prospectus may remain valid after approval. **(02)**
(ICAP, CAF 07 Level – Spring 2016, 7a)
(ICAP Book: Chapter 6 – Practice Question # 02)

Q.3
Explain whether the following decisions of company are in accordance with the provisions of the Securities Act, 2015.
(i) A prospectus has been submitted to Commission for approval, and at the same time company has decided to issue it to general public.
(ii) Prospectus was approved by Commission on January 23, 2019. Company could not circulate it due to some unavoidable reasons and now company has decided to issue it on April 09, 2019.
(ICAP Book: Chapter 6 – Example # 01)

LO 3: PUBLICATION AND AVAILABILITY OF PROSPECTUS:

Publication (or issue) of Prospectus in News Paper:
Prospectus shall be published in 1 English **and** 1 Urdu daily newspaper in full text or in abridged form.

Uploaded on web-site:
Prospectus in full text, alongwith subscription form, shall be uploaded on the website of the company, and shall remain there from date of publication in newspaper till closing of subscription.

Availability of Prospectus:
Sufficient number of copies of prospectus shall also be made available, free of charge, at following places (from date of publication in newspaper till closing of subscription):

1. At registered office of company.
2. At Stock Exchanges of the Pakistan.
3. With all bankers to the issue.
4. With concerned share registrar.
5. With concerned ballotter.
6. With concerned credit rating agency.

Commencement of Public Subscription:
Public subscription shall commence after **7 days** but within **30 days** of issue of prospectus.

Restriction:
A company shall not issue an advertisement announcing a public offer of securities, unless:

- a prospectus has been published and
- advertisement gives an address in Pakistan from which prospectus can be obtained.

Terms not to vary:
A company shall not vary terms of the clauses of prospectus, without approval of the Commission.

PRACTICE QUESTIONS

Q.4
On 25 February 2018 Badar Limited (BL), in a move to list its shares on Pakistan Stock Exchange, received approval from the Commission for the publication of prospectus.
Under the provisions of the Securities Act, 2015 advise BL with regard to the publication of the prospectus in the newspaper and its placement on the company's website. (04)
(ICAP, CAF 07 Level – Spring 2018, Q. 7a)
(ICAP Book: Chapter 6 – Practice Question # 04)

Q.5
On 4 February 2020, the Commission approved the prospectus of Victory Limited (VL) for public offer of its securities. The directors intend to publish the prospectus on 10 April 2020.
Under the provisions of the Securities Act, 2015 advise the directors with regard to the following:
(i) The time frame within which the prospectus may be published. (02)
(ii) The requirements for publication of prospectus. (03)
(ICAP, CAF 07 Level – Spring 2020, Q. 7c)
(ICAP Book: Chapter 6 – Practice Question # 05)

Q.6
(a) Deo Limited (DL) has published a prospectus on March 1, 2009. The subscription list is due to open on April 5, 2009. Explain whether the company is in compliance with the provisions of the Securities Act, 2015 regarding the publication of its prospectus. (02)
(b) Identify the places where DL is required to make available the copies of its prospectus. (02)
(ICAP, CAF 07 Level – Spring 2009, Q. 4)
(ICAP Book: Chapter 6 – Practice Question # 03)

Q.7
The Directors of Solar Limited (SL), want to arrange finances for their factory expansion project and have decided to issue 1,000,000 ordinary shares to general public. The directors want the public subscription to commence not later than 7 October 2018. Mobeen, who is the company secretary, has proposed the following schedule for the purpose:
(i) On 12 September 2018, a copy of the prospectus shall be submitted to the Registrar Joint Stock Companies for approval.
(ii) For ease of access, the copies of the prospectus shall be available for members' inspection at SL's main showroom. The prospectus shall remain open for inspection from 28 September 2018 till 4 October 2018 at a fee of Rs. 50.
(iii) The prospectus would be published in a popular fortnightly Urdu magazine on 30 September 2018.
(iv) Public subscription would commence on 5 October 2018.
Suggest appropriate revision in the above proposal to bring it in line with the provisions of the Securities Act, 2015. (05)
(ICAP, CAF 07 Level – Autumn 2018, Q. 7b)
(ICAP Book: Chapter 6 – Practice Question # 06)

LO 4: USE OF EXPERT STATEMENT IN PROSPECTUS:

Definition of Expert:
"Expert" includes banker, securities advisor, engineer, valuer, accountant, lawyer and any other person whose profession gives him authority to make a statement in prospectus.

Conditions to be satisfied if Prospectus includes a statement by an Expert:
Expert to be Independent:
Expert should NOT be engaged or interested in formation, promotion or management of the company.

Consent of Expert:
Prospectus shall be issued only if:
1. The Expert has given his **written consent** to issue the prospectus with his statement, and
2. It is mentioned in prospectus that expert has given his consent and has **not withdrawn it**.

LO 5: OFFENCE AND LIABILITY FOR MISSTATEMENT IN PROSPECTUS:

Criminal Offence:
A person makes an offence if he:
- makes an **incorrect** or misleading statement in prospectus, or
- **omits** an information which is required to be included in prospectus.

Liability/Compensation for Offence/Misstatement in Prospectus:
A person can file suit for compensation of the loss if he:
1. relied on prospectus, and
2. acquired securities, and
3. suffered loss as a result of error, omission or misleading information in Prospectus

Following persons may be sued:
1. Every offeror/issuer, or
2. Every director of offeror/issuer, or
3. Any other person who signed prospectus.

Liability of SECP:
Commission shall not be liable for any misstatement in prospectus approved by it.

Offence by Applicants:
A person who, in connection with a public offer of securities, makes a false or fictitious application, commits an offence.

PRACTICE QUESTIONS

Q.8
Sepham Limited is in process of raising money through issuance of shares and intends to issue a prospectus. Advise the management as to who would be liable under the Securities Act, 2015 to compensate the investors in case there is any deficiency in the prospectus and under what circumstances this liability would arise. **(04)**

(ICAP, CAF 07 Level – Spring 2019, Q. 7b)
(ICAP Book: Chapter 6 – Practice Question # 07)

PART 2 – COMMENCEMENT OF BUSINESS

LO 6: CERTIFICATE OF COMMENCEMENT OF BUSINESS:

Which companies are required to obtain "Certificate of Commencement of Business":

1. A public company having share capital.
2. A private company which is converted into such public company within one year of incorporation.

Restriction:
Before obtaining "certificate of commencement of business", such company shall:

- not start operations
- not exercise borrowing power.

[In case of violation, penalty @ Level 2]

Requirements/Conditions to be fulfilled to obtain certificate of commencement of business.

1. Shares have been allotted (in cash) upto the amount of **minimum subscription**.
2. Every director has paid to company full amount (in cash) for shares taken by him, or contracted to be taken by him.
3. No money is payable to applicants for any shares which have been offered for public subscription. (e.g. in case of over-subscription, or if listing refused by Stock Exchange)
4. If there is no public subscription, company has filed statement in lieu of prospectus with Registrar.
5. Company Secretary and Chief Executive (or a Director) of company have filed with registrar a declaration that above conditions have been fulfilled.

Registrar shall accept and register documents after making such inquiries as he thinks fit. Company can start its operations and exercise borrowing powers after it.

Legal status of contracts before obtaining certificate of commencement of business:

Before obtaining this certificate:

- all agreements (e.g. of sale and purchase) shall be provisional only, and shall be binding on company only on date of certificate.
- all agreements to borrow money shall be void.

> **Exam Tip – Minimum Subscription**
> It means the amount of money (fixed by memorandum or articles of company) which is required to proceed the allotment of shares. If no amount is fixed, the whole amount of share capital (excluding to be issued otherwise than in cash) is minimum subscription.

Statement in lieu of Prospectus:

A public company shall file Statement in lieu of Prospectus to Registrar if it issues shares through private placement.

PRACTICE QUESTIONS

Q. 9

Under the provisions of the Companies Act, 2017 briefly explain the exception(s) to the following general rules: "Companies can commence the business only after obtaining certificate of commencement of business from the registrar".

(02)

(ICAP, CAF 07 Level – Autumn 2019, Q. 9c)

(ICAP Book: Chapter 6 – Practice Question # 10)

APX 1: OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT);

Select the most appropriate answer from the options available for each of the following Multiple Choice Questions. Each MCQ carries ONE mark. These questions are adapted from ICAP's Study Text.

1. A single offering document allowing companies to make multiple offerings as disclosed in the offering document is known as
(a) Sale prospectus
(b) Shelf-prospectus
(c) Single Prospectus
(d) Multiple Prospectus

2. A supplement to the prospectus invites the general public for subscription of earlier offered security (ies). The supplement to the prospectus contains
(a) New prospectus
(b) Shelf-prospectus
(c) Updated disclosures
(d) None of the above

3. The prospectus is issued, published or circulated with the approval of
(a) The members
(b) The board of directors
(c) The Commission
(d) The Auditors

4. The prospectus in its full text or in such abridged form, shall be published at least in
(a) One Urdu magazine
(b) One Urdu or one English fortnight newspaper
(c) One Urdu and one English magazine
(d) One Urdu and one English daily newspaper

5. Prospectus issued shall be made available, free of charge,
(a) At the registered office of the issuer
(b) With all the bankers to the issue
(c) With the concerned share registrar
(d) All the above

6. The prospectus along with the subscription form, from the date of its publication in the newspapers, till the closing of the subscription, shall also be uploaded
(a) On the website of the securities exchange
(b) On the website of the SECP
(c) On the website of the Issuer
(d) On the website of the concerned Bank

7. Prospectus means any document, notice, circular, material, publication or other invitation offering
(a) To the general public
(b) To the board of directors
(c) Only to the existing shareholders
(d) Only to the existing customers

8. Although approval from the Commission is required for issue, publication or circulation of prospectus, there are instance where prior approval is not necessary such instances include
(a) Securities offered by the State Bank of Pakistan
(b) Where securities are offered in connection with a private offering
(c) Where the securities are shares and are offered as bonus shares
(d) All of the above

9. A prospectus approved by the commission shall be valid for a period of
(a) 30 days from the date of such approval
(b) 60 days from the date of such approval
(c) 90 days from the date of such approval
(d) 120 days from the date of such approval

10. A prospectus shall not contain a statement purporting to be made by an expert unless the expert is a person
(a) Who is not or has not been engaged or interested in the formation of the company
(b) Who is or has been engaged or interested in the formation of the company
(c) Who is engaged or interested in the promotion of the company
(d) Who is engaged or interested in the management of the company

11. If a public company opts not to issue shares to the general public initially and start the business in such a case Company would be required to file with the registrar
(a) Statement of affairs
(b) Statement of capital
(c) Statement in lieu of prospectus
(d) Statement in lieu of advertisement

12. The prospectus is a formal document and needs
(a) Approval from the board and clearance from the auditors.
(b) Approval from the members and clearance from the creditors
(c) Approval from the Commission and clearance from the securities exchange
(d) Approval from the court and clearance from the registrar

13. Once issued and securities allotted under a prospectus
(a) It shall be sent to the registrar
(b) It shall be sent to the securities exchange
(c) Its existence will end
(d) Its existence will continue till the next AGM

14. A prospectus is required to be submitted to the SECP for approval at least
(a) 14 days before the proposed date of publication in the newspapers
(b) 21 days before the proposed date of publication in the newspapers
(c) 30 days before the proposed date of publication in the newspapers
(d) None of the above is correct

15. Minimum time gap between the date of publication of a prospectus and the date of subscription shall be
(a) 14 days
(b) 21 days
(c) 30 days
(d) 7 days

16. For obtaining the certificate of commencement of business a public company has to meet certain requirements. Choose the incorrect one from following
(a) The company should have allotted shares against cash equal to the amount of minimum subscription
(b) The directors should have paid in cash to the company full amount on each of the shares taken or contracted to be taken
(c) The members should have paid in cash to the company full amount on each of the shares taken or contracted to be taken
(d) No money is or may become liable to be repaid to applicants for any shares

17. Before being permitted to trade, a public company must have:
(a) Obtained a certificate of incorporation only
(b) Been listed on the securities exchange
(c) Issued a prospectus
(d) Obtained a commencement of business certificate and certificate of incorporation

18. Which of the following shall be considered conclusive evidence on the basis of which a public company shall be entitled to start its operations?
(a) Received full amount from every director on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash.
(b) Submitted the duly verified declaration along with other documents duly verified by CEO and the registrar has accepted & registered the same.
(c) Allotted shares that were held subject to payment of whole amount thereof in cash equivalent to minimum subscription.
(d) Repaid the money to the applicants for any shares which have been offered for public subscription.

19. A prospectus is required to be duly signed by:
(a) the chief executive and a director
(b) every person who is named therein as a director or proposed director
(c) the chief executive, a director and the chief financial officer
(d) every director including the chief executive

20. Minimum subscription is:
(a) the total authorised share capital of a company as stated in the prospectus
(b) the whole amount of the share capital other than that issued or agreed to be issued as paid up otherwise than in cash, if no amount of minimum subscription is so fixed
(c) the whole amount of the subscription received from applicants, if no amount of minimum subscription is so fixed
(d) the amount to be generated from public for which prospectus is issued

Answer to MCQs

1	(b)	A Shelf Prospectus is a single offering document allowing companies to make multiple offerings.
2.	(c)	The supplement to the prospectus contains updated disclosures and it also provides such information as prescribed by the commission.
3.	(c)	The approval of prospectus is given by the commission and the commission may also impose further conditions or restrictions.
4.	(d)	The prospectus shall be published at least in one Urdu and one English daily newspaper.
5.	(d)	A sufficient number of copies of the prospectus as approved by the commission, shall be made available in six different places.
6.	(c)	The prospectus along with subscription form shall be uploaded on the website of the issuer.
7.	(a)	The prospectus is a document issued for general public and invites offers for sales of company's securities.
8.	(d)	The commission's approval for the prospectus is a necessary requirement but there are certain instances where commission's approval is not necessary.
9.	(b)	A prospectus shall be valid for a period of 60 days from a date of such approval
10.	(a)	The expert is to be independent and he must not be connected with the company as a promoter, manager or an employee.
11.	(c)	If the company is not issuing shares to the general public initially then the company would be required to file a statement in lieu of the prospectus with the registrar.
12.	(c)	The securities exchanges in addition to the commission are also regulators who regulate the issuance of prospectus.
13.	(c)	Prospectus is not like something the memorandum and article of association. Once issued and securities allotted, its existence ends.
14.	(b)	The issuer, shall not less than 21 days before the proposed date of publication, submit a copy to the commission for approval.
15.	(d)	The prospectus shall not be published in the newspaper less than 7 days or more than 30 days before the commencement of public subscription.
16.	(c)	Not the members but only the directors should have paid in cash to the company full amount on each of the shares taken or contracted to be taken
17.	(d)	A public company after obtaining certificate of incorporation is also required by law to obtain certificate of commencement of business.
18.	(b)	Submitted the duly verified declaration along with other documents duly verified by CEO and the registrar has accepted & registered the same.
19.	(b)	every person who is named therein as a director or proposed director
20	(b)	the whole amount of the share capital other than that issued or agreed to be issued as paid up otherwise than in cash, if no amount of minimum subscription is so fixed

APX 2: SOLUTIONS TO PRACTICE QUESTIONS:

Q. 1

Approval of prospectus is **NOT required** in following cases:

- If securities are offered to members or their family members, or
- If securities are offered to employees of the company or their family members, or
- If shares are issued as bonus shares to members of the company, or
- If securities are offered through private offering or private placement, or
- If securities are offered by State Bank of Pakistan, or
- If a listed holding company issues shares in its subsidiary company to its members as dividend.

Examiners' Comments:

- *Examinees should learn the elementary difference between "securities" and "shares".*
- *Instead of mentioning issue of these shares to the members of listed subsidiary company, examinees mentioned issue of shares of a subsidiary company to its listed holding company.*

Marking Plan:

▪ Up to 01 mark for identifying each exception	4.0 marks

Passing Percentage:
37%

Q. 2

Time frame to obtain approval:
Company should apply to Commission for approval of prospectus atleast 21 days before proposed date of publication of prospectus.

Validity period:
Prospectus approved by Commission remains valid for 60 days from date of approval. However, on application, this period may be extended by Commission.

Examiners' Comments:
The performance remained very poor. Majority of the candidates mentioned the time frame for the issuance of prospectus instead of the time frame within which approval for the issuance of prospectus may be obtained from the Commission.

Marking Plan:

▪ Identification of the time frame within which approval may be obtained	1.0 marks
▪ Identification of the time for which the prospectus may remain valid after approval	1.0 marks

Q. 3

(i) This decision is not in accordance with Securities Act. A company cannot issue prospectus to general public unless it has been approved by Commission.

(ii) Approval of Commission is valid for 60 days only, which have passed. Now, company will have to obtain extension from Commission to issue Prospectus.

Q. 4

Publication in newspapers:
Prospectus is required to be published within 60 days of approval i.e. by 25 April 2018 (or extended period if approved by Commission) in 1 English and 1 Urdu daily newspaper in full text or in abridged form.

Placement on website:
Company shall upload Prospectus on its website. It shall remain available from date of publication in newspaper till closing of subscription.

Examiners' Comments:
This part required the candidates to advise a company under the Securities Act, 2015 regarding publication of prospectus in the newspaper and its placement on the company's website.
The candidates responded in an average manner as most of them scored around passing marks but very few could score full marks. It was observed that most of them reproduced the law whereas in scenario based questions they were expected to advise on the basis of the given scenario. Most of the students struggled in explaining the time frame for publication of prospectus in a comprehensive manner.

Marking Plan:

▪ Advice on the period within which prospectus is to be published	2.0 marks
▪ Advice on the provisions for publication of prospectus in the newspaper	3.0 marks
▪ Advice on the provisions for uploading of prospectus on the website	1.0 marks

Passing Percentage:
42%

Q. 5

(i)

Relevant Legal Provision:
Prospectus shall be published within 60 days of approval (or extended period if approved by Commission).

Decision and Basis of Decision:
Validity period of prospectus is 60 days. VL should either publish it on or before 03 April 2020, or should obtain extension from Commission to publish it on 10th April 2020.

(ii) Prospectus shall be published in 1 English **and** 1 Urdu daily newspaper in full text or in abridged form.
Prospectus in full text shall also be uploaded on the website of the company, and shall remain there from date of publication in newspaper till closing of subscription.

Examiners' Comments:
(i) Majority of the examinees did not mention that company can apply to the Commission for extension in initial period of sixty days along with reason(s) for such extension.
(ii) Some of the examinees did not mention that company is also required to publish the prospectus on its website. Those who mentioned about the website publication, failed to appreciate the timing of its publication on the web.

Marking Plan:

(i)	
▪ Discussing the provisions relating to time frame within which the prospectus may be published	1.5 marks
▪ Conclusion	0.5 marks
(ii)	
▪ Explaining the requirement for publication of prospectus in newspaper	2.0 marks
▪ Explaining the requirement for publication of prospectus on website	1.0 marks

Passing Percentage:
37%

Q.6

(a) Public subscription should commence within 30 days of publication of Prospectus. So, company should not open subscription list on 05-April. Rather, it should be opened on or before 30th March.

(b) Copies of prospectus are made available at following places:

1. At registered office of company.
2. At Stock Exchanges of the Pakistan.
3. With all bankers to the issue.
4. With concerned share registrar.
5. With concerned ballotter.
6. With concerned credit rating agency.

Examiners' Comments:

(a) This was an easy question, soliciting the requirements of section 53(2) of the Companies Ordinance, 1984. It was also attempted well and a number of students secured full marks.

(b) Majority of the students performed well on this part of the question. However, few of them relied on mere speculation and also included the office of SECP and the registrar, as the places where the company should keep the copy of its prospectus.

Q.7

(i)

- Prospectus should be submitted to Commission for approval, and not to Registrar.
- Prospectus should be submitted atleast 21 days before proposed date of publication (i.e. September 30). Therefore, prospectus should be submitted on or before 08 September.

(ii)

- Copies of prospectus should be available at registered office (and other specified places) and not at showroom.
- Prospectus should remain open for inspection from date of publication (30 September) till closing of subscription list.
- Prospectus shall be made available free of cost. No fee should be charged.

(iii) Prospectus should be published in Daily Urdu as well as English newspaper.

(iv) Public subscription should commence after 7 days of publication of prospectus i.e. on or after 7 October.

Examiners' Comments:

Average performance was witnessed in this part. Many candidates thought that prospectus would be approved by the Registrar Joint Stock Companies instead of Commission. Similarly, many candidates, being unaware of the requirements for inspection of prospectus by general public, stated that prospectus shall be kept at SL's showroom, Registrar office and Commission's office for inspection of general public.

Marking Plan:

▪ 0.25 to 0.5 mark for suggesting each revision in the proposal	5.0 marks

Passing Percentage:
26%

Q.8

Who would be liable to compensate:

- Every offeror/issuer, or
- Every director of offeror/issuer, or
- Any other person who signed prospectus.

Under what circumstances this liability would arise:

If a person:

- relied on prospectus, and
- acquired securities, and
- suffered loss as a result of error, omission or misleading information in Prospectus

Examiners' Comments:

- *Candidates correctly determined that investors would have to be compensated for untrue or misleading statement in the prospectus but did not mention that investor must have suffered loss due to such misstatement.*
- *Many candidates overlooked that any omission from the prospectus of a matter required to be included in the prospectus under the law would likewise trigger the liability to compensate.*

Marking Plan:

▪ Identifying the persons who are liable to compensate investors in case of deficiency in prospectus	2.0 marks
▪ Stating prescribed circumstances under which the above liability will arise	2.0 marks

Passing Percentage:
49%

Q. 9

Following companies do NOT require this certificate to commence business:

1. A private company
2. A private company which converts itself into public company after 1 year of incorporation.
3. A public company not having share capital.

Examiners' Comments:

Private company was correctly mentioned by most of the examinees. However, other two exceptions were not found in most of the answer scripts.

Marking Plan:

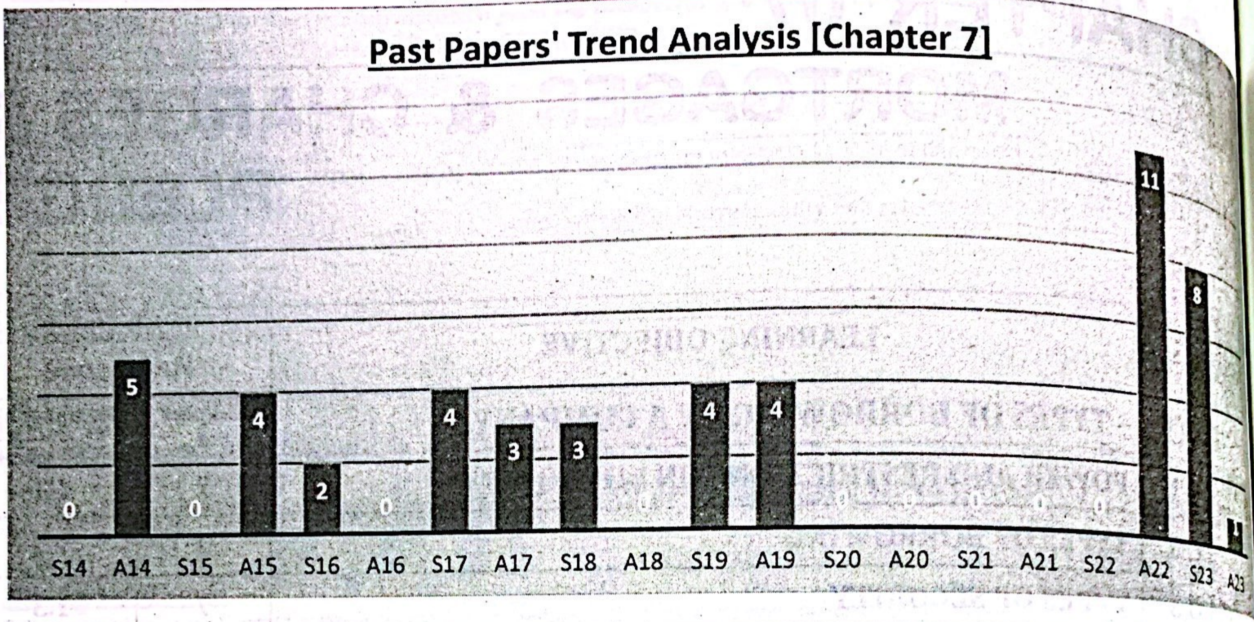
▪ Up to 0.75 mark for stating each exception under which a company can commence the business without obtaining the certificate of commencement of business	2.0 marks

Passing Percentage:
44%

CHAPTER 07

MORTGAGES & CHARGES & PLEDGE

LO #	LEARNING OBJECTIVE	ICAP Book Reference	
	PART 1 – TYPES OF BORROWING BY A COMPANY	**Chapter #**	**Paragraph #**
LO 1	POWER AND RESTRICTIONS ON BORROWING	7	1.1
LO 2	TYPES OF BORROWING	7	1.2
LO 3	TYPES OF SECURITY	7	1.3
	PART 2 – REGISTRATION OF MORTGAGES & CHARGES & PLEDGE		
LO 4	PLEDGE, MORTGAGE OR CHARGE REQUIRED TO BE REGISTERED	7	Section 2
LO 5	PROCEDURE FOR REGISTRATION	7	
LO 6	MODIFICATION IN PARTICULARS OF REGISTERED MORTGAGE/CHARGE	7	Section 3
LO 7	DELAYED REGISTRATION OR RECTIFICATION IN PARTICULARS OF CHARGE	7	
LO 8	REGISTRATION OF PAYMENT OR SATISFACTION OF DEBT	7	
LO 9	RECORDS AND REGISTER OF MORTGAGES AND CHARGES	7	Section 4
	APPENDIX		
APX 1	OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT)		
APX 2	SOLUTIONS TO PRACTICE QUESTIONS		



Overview of the Chapter:

- This chapter discusses requirements if a company obtains a loan against security of its assets, particularly procedure regarding registration of loan and its repayment.

Examinability of the Chapter: ***(considering latest syllabus and testing by ICAP)***

Although, examiner may ask question from any topic in any way. However, based on my past experience:

- Both types of questions may be asked from this chapter i.e. question of reproduction as well as case study.
- No major question is expected in upcoming attempt from this chapter.

In-depth analysis of examinability with particular reference to ***Spring 2024 attempt*** *will be explained in class.*

PART 1 – TYPES OF BORROWING BY A COMPANY

LO 1: POWER AND RESTRICTIONS ON BORROWING:

Powers of a company to borrow money:

A company is deemed to have powers:

- to borrow money from financial institutions or general public, and
- to issue debentures (including not based on interest).

Company can also create pledge, mortgage or charge on its property for borrowing purpose.

> **Points to Note:**
> - It is not necessary to include specific power to borrow money in memorandum or articles.

Restrictions on a company to borrow money:

A public company cannot borrow money until it obtains certificate of commencement of business from Registrar.

Restrictions on directors to borrow money:

Directors can borrow money on behalf of company, after passing a resolution in board meeting.

Members can restrict their powers to borrow by mentioning in Articles the maximum limit which can be borrowed. If directors exceed this limit, this is called "Ultra-vires Directors" borrowings.

LO 2: TYPES OF BORROWING:

Forms of Borrowings by a Company:

1. Issuing Debentures. [To general public or private placement]
2. Borrowings from credit/financial institutions.
3. Borrowings from other sources

These borrowings may be either secured (through Pledge, Mortgage or Charge) or unsecured.

Debentures:

Debentures are securities issued by company to borrow money. These may be secured or unsecured.

Loan from credit/financial institutions:

Credit institutions include commercial banks, investment banks, non-banking financial institutions, modarabas, and other business organizations. These loans are usually secured against assets of the company.

Loan from other sources:

Other sources include controlling shareholders, or directors. These loans are usually unsecured.

LO 3: TYPES OF SECURITY:

To secure the repayment of a loan, a company can make following types of arrangements as security:

1. Pledge
2. Mortgage
3. Charge

In all cases, there is a borrowing contract between lender and borrower which states that if default is made in repayment of loan, lender has a right to take physical possession of security and sell it. Every Pledge, Mortgage and Charge is required to be registered with Registrar.

Pledge:

"Pledge is a bailment of goods as security for the repayment of a debt, or performance of a promise."

Pledge is created on movable property (usually inventory of a company). Goods are physically transferred to bank/lender as security.

Mortgage:

"Mortgage means an interest or lien is created on property or assets of a company or any of its undertakings or both as security."

Mortgage is created on immovable property (usually factory, building of a company). Property is not physically transferred, however title documents is transferred to bank/lender. If company default, bank can get physical possession.

Charge:

"A charge is security for the payment of a debt or obligation that does not require transfer of property, or title documents to banker/lender."

Charge can be created on movable as well as immovable property (including inventory, debtors, factory, building, machinery).

There are **two types of Charge:**

Fixed Charge	Floating Charge
It is created on specific identifiable present assets e.g. specific land and building, specific plant and machinery.	It may be created: ▪ on any class of assets (present or future) which changes over time, or ▪ on entire undertaking of the company.
Company cannot dispose/replace assets under Fixed Charge, without approval of lender/bank.	Company can dispose assets under Floating Charge (provided value of remaining assets is not reduced below an agreed amount). New assets acquired will automatically be subject to charge.
At time of default or winding up, holder of fixed charge possesses right of priority in respect of asset secured.	At time of default or winding up, holder of floating charges has right subordinate to fixed charge.

PART 2 – REGISTRATION OF MORTGAGES & CHARGES

LO 4: PLEDGE, MORTGAGE OR CHARGE REQUIRED TO BE REGISTERED:

A company is required to register the following types of Pledge, Mortgages or Charges with Registrar:

1. On any movable property.
2. On any immovable property wherever situated.
3. On book debts.
4. On the property or undertaking of the company, including stock-in-trade.
5. On goodwill or on any intellectual property.
6. On a ship or aircraft, or any share in a ship or aircraft.
7. For issuance of debentures.
8. For issuance of any instrument in the nature of redeemable capital.
9. On conditional sale agreements (e.g. lease financing, hire-purchase, sale and lease back) for acquisition of property.

However, a negotiable instrument issued to secure a debt is not required to be registered.

LO 5: PROCEDURE FOR REGISTRATION:

Duty of Company:

1. If a company creates pledge, mortgage or charge (as security of its debts), it has duty to:
   a. file to **Registrar**
   b. within **30 days** after the day of its creation.
   c. **specified particulars** of mortgage/charge, alongwith Instrument creating charge
2. Upon registration, registrar shall issue **certificate** of registration under his signature and official seal.

Lender also has right to register the charge. Charges of registration are borne by the company.

If Charge created in Pakistan but property is situated outside Pakistan:.

A copy of instrument is filed for registration **in Pakistan** even if further proceedings may be necessary to make mortgage/charge valid according to the law of the country in which the property is situated.

Mortgage/Charge created outside Pakistan on property outside Pakistan:

1. It should also be registered **in Pakistan** within a period of 30 days.
2. This period shall start after the day when documents of registration should reach Pakistan in due course if sent with due care.

Constructive notice of registration:

- A person buying property from a company is assumed to have notice of any mortgage or charge created on property.
- If a company acquires a property which is subject to mortgage/charge, it is required to register mortgage/charge within prescribed period after acquisition.

Consequences of non-registration:

If a pledge/mortgage/charge is not registered with Registrar within prescribed time:

1. Charge will be **void** and shall not be taken into account by liquidator or any other creditor.
2. However, company is still contractually **liable to pay** the debt (as unsecured debt).

CONCEPT REVIEW QUESTION

Q. 1
XYZ Limited obtained a loan of Rs. 200 million from ABC Bank and provided security by creating a mortgage on its property on 26th February 2021. State the time when mortgage is required to be registered.
(ICAP Book: Chapter 7 – Example # 01)

Q. 2
XYZ Limited obtained a loan of $40 million from ABC Bank and provided security by creating a mortgage in New York on its property situated in New York on 26th February 2021. It takes 7 days to receive documents in Pakistan dispatched from New York, USA in due course of post. State the time when mortgage is required to be registered.
(ICAP Book: Chapter 7 – Example # 02)

Q. 3
Jafer Limited acquired a property on 26th February 2021 from M/s Ali & Sons which is subject to a charge. Is Jafer limited required to get the charge registered? If so, by which date?
(ICAP Book: Chapter 7 – Example # 03)

Q. 4
XYZ Limited obtained a loan of Rs. 200 million from ABC Bank and provided security by creating a mortgage on its property on 26th February 2021. ABC Bank filed the documents for registration of the mortgage with the registrar and paid the relevant fees. Can ABC Bank recover the relevant fees paid?
(ICAP Book: Chapter 7 – Example # 04)

LO 6: MODIFICATION IN MORTGAGE/CHARGE/PLEDGE:

What is meant by Modification:
Modification means change in terms and conditions of any mortgage or charge registered.

Procedure for Registration of Modification:
1. Company shall send to Registrar particulars of modification, alongwith verified copy of instrument as evidence of modification.
2. Procedure regarding registration of mortgage/charge/pledge shall also be followed for modification.

LO 7: DELAYED REGISTRATION OR RECTIFICATION IN PARTICULARS OF CHARGE:

Procedure for Delayed Registration or Rectification of Mortgage/Charge/Pledge:
If there is an error/omission in particulars of mortgage/charge, or company has not filed particulars within prescribed time:
1. Company or other interested person shall apply to Commission.
2. Commission may order for extension of time and registration/rectification of charge if it is satisfied that:
    a. Error or omission was accidental or unintentional etc., or
    b. Error or omission does not harm creditors or members of company, or
    c. It is just and equitable.

   Order about cost of application may also be issued.
3. A copy of the order (certified by Commission or its authorized officer) shall be forwarded to Registrar within **7 days** of the order.

Previous rights not to be affected:
Subsequent/Delayed registration of mortgage/charge on a property, shall not prejudice rights already created previously on property.

LO 8: REGISTRATION OF PAYMENT OR SATISFACTION OF DEBT:

Satisfaction of mortgage or charge means that debt has been paid/settled against which charge was created on property of the company to secure debt. Charge may also be satisfied partially, if partial payment is allowed in agreement.

Procedure for Release/Satisfaction of charge:

Duty of Company:

It is the duty of company to inform the Registrar that charge has been satisfied fully or partly, within **30 days** from the date of the satisfaction, alongwith particulars of satisfaction.

Duty of Registrar:

1. On receipt of information, registrar shall send notice to lender to verify the repayment of loan and shall grant him **14 days** to file any objection.
   Show-cause notice is not required if a "No Objection Certificate" on behalf of lender is furnished, alongwith intimation of payment.
2. If no objection is raised by lender, Registrar shall register the satisfaction of charge.
3. If objection is raised by lender, Registrar shall communicate the company regarding objection raised by lender.

Effect of Delay:

If company fails to file particulars of satisfaction of charge within **30 days**, required particulars can be submitted with additional fee and penalty as may be specified.

Power of Registrar to register payment without intimation from Company:

Registrar can enter the satisfaction of a charge **without intimation from company** if evidence is given to him and he is satisfied that debt has been paid (wholly or partly), or property has been released from charge by lender, or property is no more part of company.

CONCEPT REVIEW QUESTION

Q.5

XYZ Limited gave intimation to registrar that on 24th March 2021 it has repaid its loan to ABC Bank and requested the recording of relevant satisfaction of charge. The registrar sent show cause notice to ABC Bank. ABC Bank objected to satisfaction of charge on the ground that some loan processing charges are still due. What shall be Registrar's course of action in this situation?

(ICAP Book: Chapter 7 – Example # 05)

LO 9: RECORDS AND REGISTER OF MORTGAGES, CHARGES AND PLEDGE

Company's Register of Mortgages:

Every company shall keep at its **Registered Office:**

1. Copies of instruments creating mortgage or charge which is required to be registered, and
2. Copies of instrument causing modification in terms and conditions of mortgage or charge.
3. Register of mortgages and charges.

If register is not maintained or an officer allows omission of an entry in register, it will be an offence with penalty of Level 1.

Who can inspect Register of Mortgages:

- Creditors or members of company **without fee,** and
- Any other person on payment of prescribed fee.

Refusal of Inspection:

If company or its officer refuse an eligible person for inspection of register, it will be an offence and such officer shall be liable to penalty of Level 1.

Registrar may also issue order for immediate inspection of register or copies.

CONCEPT REVIEW QUESTION

Q. 6

Afzal is creditor of XYZ Limited. He applied for inspection of register of mortgages and charges but his request was declined by company secretary of XYZ Limited who insisted on payment of fee which Afzal refused to pay. Is company secretary justified in refusing the inspection?

(ICAP Book: Chapter 7 – Example # 06)

Q. 7

Aslam, who is an employee of XYZ Limited but neither the member nor creditor, applied for inspection of copy of instrument creating a mortgage but his request was declined by company secretary of XYZ Limited who insisted on payment of fee as fixed by the company which Aslam refused to pay. Is company secretary justified in refusing the inspection?

(ICAP Book: Chapter 7 – Example # 07)

APX 1: OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT):

Select the most appropriate answer from the options available for each of the following Multiple Choice Questions. Each MCQ carries ONE mark. These questions are adapted from ICAP's Study Text.

1. The Companies Act 2017 requires certain charges (including mortgage and pledge) that must be registered. Choose the one which is not required to be registered.
(a) a floating charge on the undertaking or property of the company, including stock-in-trade
(b) a mortgage or charge on book debts of the company
(c) promissory note given to secure the payment of any book debts of a company
(d) a charge on goodwill or on any intellectual property

2. A charge was created on the property of KLM Limited on 30 June 2021. What is the latest date by which such charge must be registered?
(a) 7 July 2021
(b) 30 July 2021
(c) 15 July 2021
(d) 31 July 2021

3. A charge was created in UAE on the property situated in UAE belonging to JKL Limited on 30 June 2021. The documents posted from UAE to Pakistan take 3 days in ordinary course of post. What is the latest date by which such charge must be registered?
(a) 30 July 2021
(b) 2 August 2021
(c) 8 August 2021
(d) 15 August 2021

4. If a charge is not registered:
(a) The relevant loan need not be repaid at all.
(b) The mortgage or charge would be void against the liquidator and creditors of the company.
(c) The mortgage or charge would be valid against the liquidator of the company.
(d) The mortgage or charge would be valid against the creditors of the company.

5. Which of the following is correct with respect to duty or right as to registration of mortgages and charges?
(a) Only the borrowing company can file the mortgage or charge for registration and shall bear the cost of registration.
(b) Only the charge-holder can file the mortgage or charge for registration and shall bear the cost of registration.
(c) Either the borrowing company or the charge-holder can file the mortgage or charge for registration and such company or charge-holder, as the case may be, shall bear the cost of registration.
(d) Either the borrowing company or the charge-holder can file the mortgage or charge for registration and borrowing company shall bear the cost of registration.

6. A company shall give intimation of the payment or satisfaction in full, of any mortgage or charge to the registrar in the manner specified, within a period of:
(a) 15 days from the date of such payment or satisfaction.
(b) 30 days from the date of such payment or satisfaction.
(c) 30 days from the date of passing the special resolution.
(d) 15 days from the date of passing the special resolution.

7. Which of the following is incorrect in relation to satisfaction of mortgages and charges?
(a) The registrar may record the satisfaction of charge even when no intimation has been received by him from the company.
(b) The registrar shall send notice to charge-holder to show cause as to why the satisfaction of charge may not be recorded as intimated to him regardless of whether a no-objection certificate on behalf of holder is furnished by the company with the intimation.
(c) If no cause is shown by charge-holder of the mortgage or charge, the registrar shall accept the memorandum of satisfaction and make an entry in the register of charges kept by him.
(d) If any cause is shown by charge-holder, the registrar shall record a note to that effect in the register of charges and shall inform the company.

8. The Commission shall grant relief on being satisfied that the omission or misstatement in registration of mortgages and charges:
(a) is not of a nature to prejudice the position of creditors or shareholders of the company.
(b) was accidental or due to inadvertence or to some other sufficient cause.
(c) on grounds it is just and equitable to do so.
(d) Any one or more of above.

9. In relation to rectification or registration of mortgages and charges, the Commission, on such terms and conditions as seem to the Commission just and expedient, may order:
(a) that the omission or misstatement be rectified.
(b) that the time for filing the required particulars be extended.
(c) as to the costs of the application as it thinks fit.
(d) Any one or more of above.

10. A company did not maintain proper register of mortgages and charges and a charge registered with the registrar was omitted from the register maintained by the company. Which of the following is not a consequence thereof:
(a) The charge shall become void against the liquidator and creditors of the company.
(b) Such violation shall be an offence punishable under the Act.
(c) Any officer in default shall be liable to penalty of level 1 on the standard scale.
(d) None of the above options is correct as all of above are consequences according to Companies Act, 2017.

Answer to MCQs

1.	(c)	Promissory note given to secure the payment of any book debts of a company is not required to be registered.
2.	(b)	30 July 2021 i.e. within 30 days after the date of creation of charge.
3.	(b)	02 August 2021 i.e. within 30 days after the 3 days allowed for post to reach Pakistan.
4.	(b)	The mortgage or charge would be void against the liquidator and creditors of the company.
5.	(d)	Either the borrowing company or the charge-holder can file the mortgage or charge for registration and borrowing company shall bear the cost of registration.
6.	(b)	30 days from the date of such payment or satisfaction.
7.	(b)	The show cause notice shall not be required if a no objection certificate on behalf of the holder of the mortgage or charge is furnished, along-with the intimation submitted for the payment or satisfaction.
8.	(d)	Any one or more of above
9.	(d)	Any one or more of above
10.	(a)	Not maintaining proper record would not invalidate the mortgage or charge if it has been properly registered with the registrar. However, it would still be violation resulting in the penalty under the law.

APX 2: SOLUTIONS TO PRACTICE QUESTIONS:

Q. 1
The mortgage must be registered by 28th March 2021.

Q. 2
The mortgage must be registered by 4th April 2021.

Q. 3
Jafer Limited is required to get the charge registered by 28th March 2021.

Q. 4
ABC Bank is entitled to recover the amount of fees properly paid.

Q. 5
The registrar shall record the objection in register of charges and shall inform the XYZ Limited.

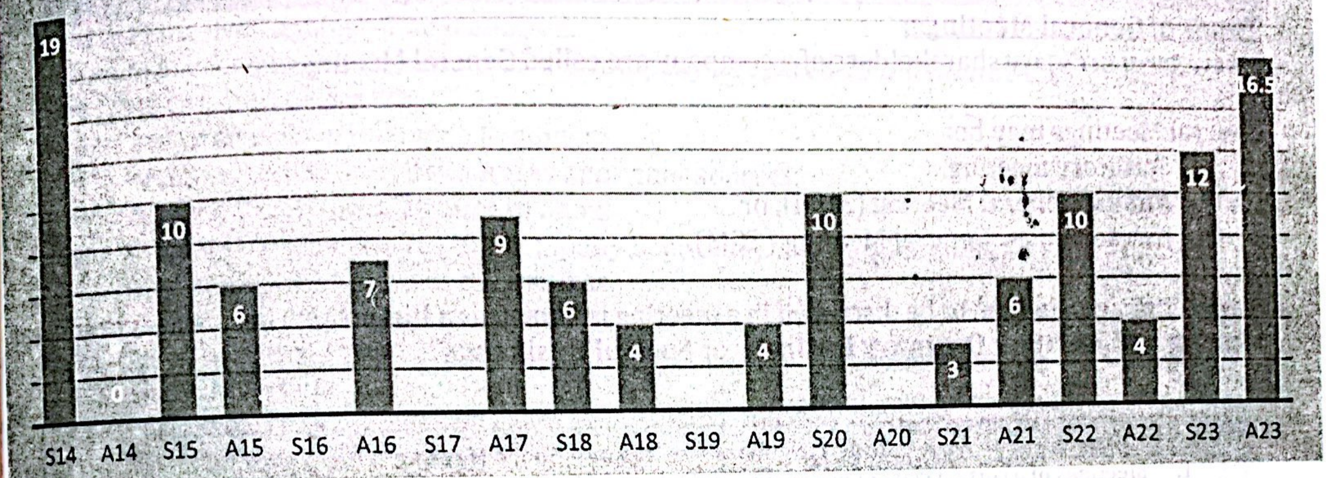
Q. 6
Afzal being creditor has right to inspect the register without fee and he may complain to registrar. The registrar may by order compel an immediate inspection and company secretary shall be liable to penalty of level 1.

Q. 7
Aslam can insist on inspection only after payment of such fee as may be fixed by the company for each inspection.

CHAPTER 08
MEETINGS AND RESOLUTIONS

LO #	LEARNING OBJECTIVE	ICAP Book Reference	
		Chapter #	Paragraph #
PART 1 – COMPANY MEETINGS			
LO 1	TYPES OF GENERAL MEETINGS	8	1.1, 1.2, 1.3, 4.1
LO 2	WHO CAN CALL GENERAL MEETING	8	1.4, 1.5
LO 3	SERVICE OF NOTICES OR DOCUMENTS	8	Section 2
LO 4	NOTICE AND PLACE OF GENERAL MEETING	8	3.1
PART 2 – CONDUCT OF MEETINGS			
LO 5	VOTING SYSTEM IN GENERAL MEETING	8	3.2, 3.3, 4.2
LO 6	PROXY AND REPRESENTATIVE	8	3.4, 3.5, 3.6
LO 7	QUORUM OF GENERAL MEETING	8	3.7
LO 8	CIRCUMSTANCES WHEN GENERAL MEETING MAY BE DECLARED INVALID	8	3.8
PART 3 – RESOLUTIONS AND RECORDS			
LO 9	RESOLUTIONS	8	4.3, 4.4
LO 10	MINUTES OF GENERAL MEETING, AND RECORDS OF RESOLUTIONS	8	4.5, 4.6
APPENDIX			
APX 1	OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT)		
APX 2	SOLUTIONS TO PRACTICE QUESTIONS		

Past Papers' Trend Analysis [Chapter 8]



Overview of the Chapter:

- ☐ This chapter discusses rules relating to calling and conduct of meetings of shareholders i.e. Statutory Meeting, Annual General Meeting (AGM) and Extraordinary General Meeting (EOGM).

Examinability of the Chapter: ***(considering latest syllabus and testing by ICAP)***

Although, examiner may ask question from any topic in any way. However, based on my past experience:

- Normally, a question of case study is asked from this chapter. Sometimes, a question of reproduction is also tested.
- This is a very important chapter. 8 – 10 marks' question is expected from this chapter in exam.

*In-depth analysis of examinability with particular reference to **Spring 2024 attempt** will be explained in class.*

PART 1 – COMPANY MEETINGS

LO 1: TYPES OF GENERAL MEETINGS:

Types of General Meetings:
Meetings of ordinary shareholders of a company are called General Meetings.

General Meetings may be:
1. Statutory meeting,
2. Annual General Meeting (AGM), or
3. Extraordinary General Meeting (EGM).

A matter or agenda item to be discussed in a meeting is known as a **business**. The business in general meeting may be either **Ordinary Business** or **Special Business**.

Study Tip – Class Meeting and Board Meeting
1. Meetings of a certain class of members, is called Class Meeting e.g. Class A, Class B.
2. Meetings of directors of a company are called "Board Meetings". Meetings of a certain group of directors is called committee meeting e.g. audit committee, risk management committee.

Statutory Meeting:
Definition:
This is the **first general meeting** of a company, in which members:
- discuss matters relating to formation of company, and
- approve Statutory Report.

Which companies are required to conduct Statutory Meeting:
- A public company having share capital.
- A private company which is converted into public company within one year of incorporation.

When is Statutory Meeting Conducted:
Statutory meeting shall be conducted:
- within **09 months** from the date of incorporation or
- within **180 days** from date when company is entitled to commence business

, whichever is earlier.

Statutory meeting is not required if first AGM is held earlier.

Contents of Statutory Report:
Statutory report is sent to shareholders alongwith notice of statutory meeting atleast **21 days** before meeting. Statutory report is an indicative of financial start-up of company and includes following matters:

1. Total number of shares allotted (distinguishing shares allotted for consideration other than cash, and stating consideration).
2. Total cash received against shares allotted.
3. Summary of receipts and payments of the company prepared to a date **not earlier by 15 days from the date of report**.
   This summary shall have following headings:
   - Receipts from shares, debentures and other sources.
   - Payments made, and Balance in hand.
   - Preliminary expenses of the company separately showing Commission or discount paid on issue of shares or debentures.
4. Particulars of directors, chief executive, secretary, auditors and legal advisers, and changes (if any) since incorporation.
5. Brief overview of company's affairs since its incorporation and the business plan.
6. Particulars of contract which are to be modified with approval of members.
7. Extent of carrying out or not carrying out of underwriting contracts, together with reason for not carrying out.
8. Particulars of commission or brokerage paid against shares issued to directors, chief executive, secretary or officer or to companies in which such persons are directors.

Certification/Authentication of Statutory Report:
Statutory report shall be certified by **Chief Executive** of the company and atleast **one director.** In case of listed company, **Chief Financial Officer** shall also certify the report.

Auditor's Report on Statutory Report:
Auditor's report on following matters shall also be attached with Statutory Report:

1. Total number of shares allotted.
2. Total cash received against shares allotted.
3. Summary of Receipts and payments of the company.

Purpose of audit report is to provide assurance whether above matters are correctly stated or not.

Filing with Registrar:
A copy of Statutory Report (alongwith auditor's report) shall be filed with Registrar immediately after sending the report to members.

Adjournment of Meeting:
The meeting may adjourn from time to time. An adjourned meeting shall have same powers as an original meeting, and any resolution may be passed at adjourned meeting for which notice has been given either before or after the original meeting.

List of members at Statutory Meeting:
Directors shall prepare a list of members, alongwith their particulars (i.e. name, occupation, nationality, address and number of shares held by them). This list shall be produced at commencement of the meeting, and will be open for inspection by any member during meeting.

Annual General Meeting:

Definition:
Every Company (except a single member company) shall hold AGM every year to discuss Ordinary Business, and special business (if any).

When is Annual General Meeting Conducted (AGM):
- **First AGM** is conducted within 16 months from the date of incorporation.
- **Subsequent AGM** is conducted once in each calendar year, **and** within 120 days from close of financial year.

*Extension upto **30 days** may be granted by Commission (for listed company) or Registrar (for other companies).*

Ordinary Business:
Following business are considered Ordinary Business:
1. Consideration and Adoption of audited **Financial statements.**
2. Consideration of **Directors' Report.**
3. Consideration of **Auditor's Report.**
4. Approval of **Dividend** (if proposed by directors).
5. Appointment of **Auditors,** and fixation of their remuneration.
6. Election and appointment of **Directors** (if due on the date of AGM).

Special Business:
Every business is considered Special Business **except** following:
- consideration of financial statements, auditor's report, and directors' report,
- the approval of dividend
- the election and appointment of directors
- appointment of the auditors and fixation of their remuneration

Specific examples of special business **include:**
- alteration of memorandum and articles,
- investment in associated company by a public company,
- mid-term removal of chief executive, director or auditor,
- approval of transaction in which majority of directors are interested.

> **Point to Note:**
> Usually, ordinary business is approved by Ordinary resolution and special business is decided by Special resolution *(except election and removal of directors).*

Extraordinary General Meeting:

Definition:
Any general meeting, other than statutory meeting and annual general meeting is called extraordinary general meeting. In EGM, members discuss special business.

> **Exam Tip – Notice of Resolution by Members**
> Normally, business to be transacted at general meeting are proposed by directors. However, members having 5 % **or more voting powers** may also give notice of any resolution to be passed.
> - If meeting is requisitioned by members, notice of resolution shall be given alongiwth requisition of meeting.
> - If meeting is requisitioned by directors (or Commission), notice of resolution shall be given by member atleast **10 days** before general meeting.
>
> Company shall forthwith circulate such resolution to all members.

PRACTICE QUESTIONS

Q.1

When should statutory meeting be conducted in following cases?

(a) A public company was incorporated on 3 January 2021 and was allowed to commence business from 25 April 2021.

(b) A public company was incorporated on 7 January 2021 and was allowed to commence business from 22 February 2021.

(ICAP Book: Chapter 8 – Example # 01, 02)

Q.1A

Joint Limited (JL) was incorporated as a public company on 1 February 2018 and was authorized by the registrar to commence business from 1 April 2018. The board of directors is divided on the issue of holding first general meeting of its members. Two directors are of the view that the meeting should be held on 30 September 2018 whereas majority of the directors want to hold it on 30 October 2018.

In the light of the provisions of the Companies Act, 2017:

(i) Explain whether you agree with the proposal of the majority of the directors or the other two directors. **(03)**

(ii) What would be your opinion in (i) above if the directors want to hold first annual general meeting on 25 September 2018? **(01)**

(ICAP, CAF 07 Level – Autumn 2018, Q. 9a)

(ICAP Book: Chapter 8 – Practice Question # 02)

Q.2

Karachi Telecommunication (Private) Limited (KTL) was incorporated on 1st March, 2009 under the Companies Act 2017. Its directors have decided to hold the first Annual General Meeting (AGM) of the company on August 10, 2010, for placing the first audited financial statements for the period ended March 31, 2010, for approval.

Comment on the decision of the directors, in the light of provisions contained in the Companies Act 2017. **(05)**

(ICAP, CFAP 02 Level – Summer 2010, Q. 5)

(ICAP Book: Chapter 8 – Practice Question # 03)

Q.3

ABC limited is incorporated on 1st April 2010 and it opts for a financial year end of 30th June every year.

(a) What is the latest time by which it is required to conduct its first AGM.

(b) Assume it conducts its AGM on 20th July, 2011, what is the latest time by which it is required to conduct its second AGM.

(ICAP Book: Chapter 8 – Example # 03)

Q.4

XYZ limited is incorporated on 1st September 2010 and it opts for a financial year end of 30th September every year.

(a) What is the latest time by which it is required to conduct its first AGM.

(b) Assume it conducts its AGM on 01 November, 2011, what is the latest time by which it is required to conduct its second AGM.

(ICAP Book: Chapter 8 – Example # 04)

Q.5

Explain the exceptions to the following provisions as specified under the Companies Act, 2017:

(-)Every company shall hold its annual general meeting within a period of 120 days following the close of its financial year and once in each calendar year. **(03)**

(ICAP, CAF 07 Level – Spring 2012, Q. 4b)

(ICAP Book: Chapter 8 – Practice Question # 04)

Q.6

Explain the term "special business" with reference to the Companies Act, 2017. Give at least two examples. **(06)**

(ICAP, CAF 07 Level – Autumn 2008, Q. 5b)

(ICAP Book: Chapter 8 – Practice Question # 08)

Q.7

Unique Limited is due to hold its first annual general meeting on 20 April 2018.Under the provisions of the Companies Act, 2017 advise the directors with regard to the types of businesses which would be deemed to be special business and also discuss additional formalities which are required to be complied with in respect of notice containing special business. **(06)**

(ICAP, CAF 07 Level – Spring 2018, Q. 8b)

(ICAP Book: Chapter 8 – Practice Question # 09)

LO 2: WHO CAN CALL GENERAL MEETING:

Directors:

- Directors have power to call General Meetings (whether Statutory, AGM or EOGM) on their own.
- Directors may call extraordinary general meeting also on the requisition of members. For this purpose, members having atleast **1/10th** of total voting power (if company has share capital) or atleast **1/10th** of total members (if company does not have share capital) shall file a **written** requisition stating the **object** of meeting, **signed** by requisitionists.

Commission

- If default is made in holding of Statutory Meeting, AGM or EGM, Commission may call general meeting on its own or on application of any director or member of the company.
- Commission may give such directions regarding conduct of meeting as it thinks fit e.g. Commission may direct that:
    - one person (present or by proxy) may be quorum, or
    - cost of meeting shall be paid by company, or recovered from its officers/directors.

If a person makes default in holding a meeting called by Commission or in complying with its direction, penalty of Level 3 will be imposed on him.

If EGM is 'requisitioned' by members but directors do not proceed to 'call' meeting:

If directors don't proceed to call the meeting within **21 days** of requisition, members may themselves call the an EGM ***(but not AGM).***

Rules of EGM called by Members:

- EGM will be conducted within **90 days** of requisition, otherwise requisition shall be expired.
- All decisions taken in such a meeting shall be binding on the company.
- Any **reasonable expenses** incurred by the requisitions shall be repaid by the company and company shall deduct this money from remuneration payable to the guilty directors.

LO 3: SERVICE OF NOTICES OR DOCUMENTS:

Under Companies Act:

1. A member can serve notice to Company, or
2. A company can serve notice to a member or can send documents to Members/Registrar/Commission, or
3. Commission or Registrar can serve notices to company.

Following are general rules applicable on serving notices and/or documents.

Address:

- Notices to Company or its officers are sent at registered office of company.
- Notices to a member is sent at his registered address, or address communicated to serve notices if he has no registered address.

Manner of Serving Notice:

Notice may be given:

1. against acknowledgment of receipt, or
2. by post/courier service, or
3. by electronic means, or
4. by any other specified manner.

When and how to send notice of general meeting:

A notice of general meeting is sent atleast **21 days** before the date of general meeting to members at their address in **Pakistan.**

In case of listed company, notice shall also be published in **one Urdu and one English daily newspaper having nationwide circulation**, and shall also be sent to **Commission.**

Exam Tip – Exception

In case of unlisted companies, if all the members entitled to attend and vote so agree, an extraordinary general meeting (EGM) may be held at a shorter notice.

Whom to send notice of a general meeting:

Notice of a general meeting shall be sent to:

1. Every **member** of the company.
2. **Legal representative** of a deceased member (if company is notified)
3. **Official receiver** of an insolvent member (if company is notified)
4. Every **director** of the company
5. **Auditor** of the company

Points to Note:

- Directors can attend general meeting, but they can vote only if they are members.

When is notice by post deemed effective:

Where a notice is sent by post, it will be deemed to be served if it is properly addressed, prepaid, posted with a letter containing notice. It is assumed as served when letter is normally delivered in the ordinary course of post (unless the contrary is proved).

Exam Tip

Accidental omission to give notice to any member, or the non-receipt of notice by any member shall not invalidate the proceedings at any meeting.

Notice in case of Joint-Shareholders:

A notice may be given by the company to the joint-holders of a share by giving the notice to the joint-holder named first in the register of members.

Notice to Legal Representative:

A notice may be given by the company to the legal representatives of a member (in case of death) or official assignee (in case of insolvency) at the address supplied by legal representative for this purpose.

PRACTICE QUESTIONS

Q. 7A

(a) XYZ Limited posted letters containing the notice to its members by post on 2nd February by properly addressing, prepaying and positing for its AGM to be held on 27th February. One of the letter addressed to Zahid was delayed by 15 days due to error by relevant postal staff. The letters are usually delivered within 2 days but Zahid received it on 19th February. Zahid has questioned the validity of AGM on account of delay in delivery of notice which was received just 8 days (and not at least 21 days) before AGM. Is Zahid's claim valid?

(b) Azam, Babar and Chand (names in accordance with sequence in register of members) are joint shareholders of 5% shares in XYZ Limited. XYZ Limited sent notice for AGM only to Babar. Azam and Chand claimed they should have received the notice instead, Is claim of Azam and Chand valid?

(c) XYZ Limited received a notice from official assignee of Sajid', one of its members, informing XYZ Limited of insolvency of Sajid and his appointment as official assignee with relevant particulars and documents. XYZ Limited is in process of calling an EGM. Whom should XYZ Limited send notice of meeting?

(ICAP Book: Chapter 8 – Example # 05, 06, 07)

LO 4: NOTICE AND PLACE OF GENERAL MEETING:

What information should notice of a general meeting contain:

Notice of **every** general meeting shall specify following information:

1. Date, Hour and Place of the meeting
2. Nature of each Business to be transacted (whether ordinary or special).
3. Option to provide on demand, facility of video-link for attending the meeting.
4. Members' right to appoint proxy, and rights of such proxy (i.e. right to attend, speak and vote at general meeting). A Proxy Form shall be annexed to the notice.

If a **special business** is to be transacted, following shall be annexed to the notice:

1. Draft of special resolution.
2. Statement describing all material facts relating to such business.
3. Nature of interest of directors whether directly or indirectly (if any).
4. If a document is to be approved by the general meeting, time and place where document can be inspected.

Additional information in case of **AGM**:

1. number of directors to be elected, and names of retiring directors (if relevant).
2. copy of financial statements, auditor's report and directors' report shall be annexed.

Additional information in case of **Statutory Meeting,** Statutory Report shall be annexed.

Study Tip – Discussion at Meeting

Members may discuss any matter in the general meeting. However, resolution shall be passed only for those matters for which prior notice has been given.

Where to conduct General Meeting:

Listed companies shall hold AGM in the town in which registered office of the company is situated, or in nearest city.

How to attend General Meeting:

Members can attend meeting personally, or through video-link (considered present in person), or through proxy.

Video-Link Facility:

Listed company shall also arrange facility of video-link to its members not residing in city where AGM is held, if members holding atleast **10%** of share capital, submit to company a written request atleast **07 days** before meeting.

Who shall be Chairman/President of the Meeting:

1. Chairman of board shall be the chairman of general meetings.
2. If Chairman is not present within **15 minutes** of the meeting or is unwilling to act as chairman, any one of the directors may be elected to be chairman.
3. If no director is present or willing to act as chairman, any one of the members may be elected by members to be chairman.

Single Member Company:

In case of a single member company, it will be assumed that it has complied will all requirements relating to holding of general meeting, board meeting or election of director if:

1. decision is recorded in minute book, and
2. signed by sole-member or sole-director.

PRACTICE QUESTIONS

Q.8

Explain whether or not the following statements are in accordance with the provisions of the Companies Act, 2017 and support your answer with reasons:

(a) All limited companies are required to hold statutory meeting within 6 months of incorporation. **(03)**

(b) Notice of an extraordinary general meeting should always be sent to the shareholders, at least 21 days before the date of the meeting. **(03)**

(ICAP, CAF 07 Level – Spring 2010, Q. 3 b&d)
(ICAP Book: Chapter 8 – Practice Question # 01, 05)

Q.9

Peach Panther Ltd (PPL) is planning to call an Extra Ordinary General Meeting (EOGM) to transact certain businesses due to an emergency faced by the company.

You are required to answer the following:

(i) Which meetings are called EOGM?

(ii) What is the minimum notice period for calling an EOGM? Can PPL hold such meeting on a shorter notice? **(05)**

(ICAP, CAF 07 Level – Autumn 2008, Q. 5a)
(ICAP Book: Chapter 8 – Practice Question # 06)

Q.10

The annual general meeting of Alpha Limited (AL), a listed company, is scheduled to be held in March 2020 to transact several ordinary and special businesses such as election of directors including independent directors.

Under the provisions of the Companies Act, 2017 list the information which must be included in AL's notice of annual general meeting to be published in the newspapers. Your answer should cover all aspects which must either be included in or be annexed to notice of annual general meeting. **(10)**

(ICAP, CAF 07 Level – Spring 2020, Q. 9)
(ICAP Book: Chapter 8 – Practice Question # 18)

PART 2 – CONDUCT OF MEETINGS

LO 5: VOTING SYSTEM IN GENERAL MEETING:

Right of vote:
A holder of voting security cannot be stopped from casting vote. Votes can be cast either personally, or through video-link, or through postal ballot or by proxy.

Voting Systems:
There are two methods of casting vote i.e. Show of Hands, and Poll.

Show of Hands:
1. This method will be used at first instance.
2. Each member will have one vote; **Proxy cannot vote.**
3. Chairman shall declare whether resolution has been passed or not. An entry in the minutes of the meeting shall be conclusive evidence of voting.

Poll/Secret Ballot: *(only for company having share capital)*
1. Before or on declaration of results by show of hands, Poll can also be:
   - Conducted by Chairman on his own motion, or
   - Demanded by members having atleast **10% of voting power** (present in person or through video-link or by proxy).

   Demand for Poll may be withdrawn at any time by the persons who made the demand.
2. Each member will have votes **proportionate** to its **number** and **class** of shares; proxy can also vote. (Fractional votes are not considered)
3. Chairman shall have powers to regulate the manner in which Poll shall be taken.
4. Chairman (or his nominee) and a representative of members demanding poll, will scrutinize the votes given on Poll. Chairman shall announce the result.

Time of Taking Poll:
Poll shall be taken within **14 days** of demand. However, Poll relating to election of a chairman or adjournment of meeting, shall be taken immediately.

> **Exam Tip – Status of Resolution Passed at Adjourned Meeting (Poll ≠ Adjourned Meeting)**
> A resolution passed at any adjourned meeting shall be effective from the day on which it is actually passed, and not on any earlier date. However, result of Poll shall be considered as the decision of meeting in which Poll is demanded.

PRACTICE QUESTIONS

Q. 11
On declaration of the result of voting in the Annual General Meeting (AGM) by the chairman of AS Limited, a public company, few shareholders demanded a poll. The chairman refused to hold the poll and declared the result of voting on show of hands.
In the light of Companies Act, 2017,
(a) How would you assess whether or not the Chairman's decision of not holding a poll was valid?
(b) Explain whether the Chairman can delay the holding of poll to a date subsequent to the date of AGM.
(ICAP, CFAP 02 Level – Summer 2013, Q. 9)
(ICAP Book: Chapter 8 – Practice Question # 10)

Q. 12
Mr. Shakeel has significant shareholdings in various public and private companies. He is not satisfied with some of the resolutions passed by such companies by show of hands. You are required to advise him as regards the following:
(a) What condition would he need to satisfy if Mr. Shakeel wishes to request for a poll? (01)
(b) Explain whether a company is required to oblige him if he wishes to satisfy himself about the validity of the results of voting by poll. (01)

(ICAP, CAF 07 Level – Spring 2011, Q. 2)
(ICAP Book: Chapter 8 – Practice Question # 11)

Q. 13
Maria Limited AGM was scheduled and conducted on 17th August 2020 in which a resolution for change of registered office was among the other businesses to be transacted. However, the meeting was adjourned to 31st August 2020 and then the resolution for change of registered office was passed.
When will this resolution be deemed to have been passed?

(ICAP Book: Chapter 8 – Example # 08)

LO 6: PROXY AND REPRESENTATIVE:

If a member is a natural person, he can appoint another person as his **Proxy** to attend general meeting on his behalf. Similarly, if a member is an artificial person (e.g. company or government), it can appoint a natural person as its **Representative.**

Proxy:

Matters to be included in notice of General Meeting:
Notice of general meeting shall include:
- Right of member to appoint proxy.
- Rights of proxy (e.g. to attend, speak and vote at general meeting).

Proxy Form shall be annexed to the notice.

Requirements relating to Proxy:
1. Proxy is allowed only in a company having share capital (unless articles allow otherwise).
2. Proxy must be a member (unless articles allow otherwise).
3. A member can appoint only one proxy for a meeting. If more than one proxies are appointed, all appointments shall be invalid.
4. Instrument of Proxy shall be:
   - in writing, and signed by appointers or his authorized attorney *(if the appointer is a body corporate, it shall be under its seal and be signed by an officer or an attorney duly authorised by it).*
   - lodged with Company atleast **48 hours** before the time of meeting (holidays shall not be counted).
5. Proxy Forms:
   - Can be inspected by members during business hours.
   - Shall be accepted even if it does not comply with additional requirements by company.

Rights of Proxy:
1. Right to attend, speak and vote at general meeting.
2. Right to be counted for quorum of meeting.
3. Right to demand a Poll on any resolution.

Articles cannot change rights of proxy.

Representation at meetings:

Who can represent a company/Body Corporate:

1. A company can authorize **any** individual **(through Board Resolution)** to act as its representative in meetings.
2. Instrument of power of attorney shall be in writing, and under its seal or signed by an authorized officer/attorney.
3. Such person shall have same powers as are available to the company to which he represents.

Who can represent a government:

1. Federal Govt. or a Provincial Govt. may authorize **any** individual to act as his representative at a general meeting.
2. Such person shall have the same rights and powers (including right to appoint proxy) as are available to the Federal/Provincial Govt. to which he represents.

PRACTICE QUESTIONS

Q. 14

Fancy Works Limited (FWL) is in process of finalizing the prerequisites of holding its first Annual General Meeting (AGM) to be held on 31 October 2019.

(i) Advise FWL about the matters relating to proxies which must be included in the notice of AGM. **(02)**

(ii) Arbaz Limited (AL) is a member of FWL. How would AL represent itself in the AGM? **(02)**

(ICAP, CAF 07 Level – Autumn 2019, Q.7b)

(ICAP Book: Chapter 8 – Practice Question # 12)

Q. 15

Green Leaf Limited, a listed company, has sent a notice of the forth coming Annual General Meeting, to the Company Secretary of Red Rose Limited which is also a listed company. Red Rose Limited has recently acquired 100,000 shares in Green Leaf Limited and you are required to advise its directors about the following, in the light of Companies Act, 2017:

(a) Who can represent Red Rose Limited in the annual general meeting of Green Leaf Limited? **(03)**

(b) What are the essential characteristics of an instrument of proxy to be submitted to Green Leaf Limited and what is the deadline for its submission? **(04)**

(ICAP, CAF 07 Level – Autumn 2008, Q. 4)

(ICAP Book: Chapter 8 – Practice Question # 13)

LO 7: QUORUM OF GENERAL MEETING:

What is a Quorum:

Quorum means minimum number of members which should be present to start a meeting. A meeting without quorum shall be **void**.

Quorum Requirements:

1. For Listed Companies:

Quorum of a listed company shall be:

- 10 members (present personally), and
- representing 25% of total voting power (present or proxies)

Articles may specify a larger number as Quorum.

2. For Other Companies having share capital:

Quorum of other companies shall be:

- 02 members (present personally), and
- representing 25% of total voting power (present or proxies)

Articles may specify a larger number as Quorum.

3. For Companies Not having share capital:

Quorum shall be as provided in Articles.

If quorum is not present at a meeting within 30 minutes:

If meeting is called on requisition by Members:
Meeting shall be dissolved.

If meeting is called by Directors on their own:
- Meeting shall be adjourned to the same day in the next week, at the same time and place.
- If quorum is again not present at adjourned meeting, **02 members** (present personally or through video link) shall be quorum unless articles provide otherwise.

PRACTICE QUESTIONS

Q. 16
The Board of Directors of Classic Paints Limited, a public listed company, has called an Extraordinary General Meeting on the requisition of the shareholders holding 10% of the voting power of the company. Approximately twenty minutes before the commencement of the meeting, the Chairman of the Board of Directors informed the Company Secretary of his inability to attend the meeting due to the death of a close relative.
Required:
(a) What would be the quorum of the above meeting?
(b) Mention the latest time by which the quorum of the meeting should be present. What would be the impact if quorum is not present within the prescribed time?
(c) Who could chair the meeting in the above situation? **(10)**
(ICAP, CAF 07 Level – Autumn 2009, Q. 7)
(ICAP Book: Chapter 8 – Practice Question # 14)

Q. 17
The general meeting of VX Limited, a listed company, was convened on 30 May 2012. However, only four shareholders turned up to attend the meeting.
Explain how VX Limited should deal with the above situation in the light of Companies Act, 2017. **(06)**
(ICAP, CFAP 02 Level – Summer 2012, Q. 12)
(ICAP Book: Chapter 8 – Practice Question # 15)

Q. 18
An Extraordinary General Meeting of Mastermind Technologies Limited (MTL), a listed company, was scheduled to be held on October 31, 2009. The directors adjourned the meeting for the next week as the quorum was not present within fifteen minutes of the scheduled time.
Based on the provisions of the Companies Act, 2017, you are required to comment on the following:
(a) The decision of the directors to adjourn the meeting, assuming:
(i) the meeting was called upon the requisition of the members. **(03)**
(ii) the meeting was called by the directors. **(02)**
(b) The impact of the adjournment on the validity and rights of proxies. **(02)**
(c) The validity of the resolution passed at the adjourned meeting.
(ICAP, CFAP 02 Level – Summer 2010, Q. 4)
(ICAP Book: Chapter 8 – Practice Question # 16)

LO 8: CIRCUMSTANCES WHEN GENERAL MEETING MAY BE DECLARED INVALID:

Court may declare a general meeting invalid (all proceedings or part) if:

1. Members having **10%** or more voting power
2. File petition with **Court**
3. Within **30 days** of the disputed meeting, and
4. It is proved that there was a material defect or omission in notice or irregularity in the proceedings of meeting which prevented members from using their rights effectively.

Court may also order to hold fresh general meeting.

PRACTICE QUESTIONS

Q. 19

The 21st annual general meeting (AGM) of Noke Jhoke Limited was held on 20 August 2015. Two of the shareholders, Mateen and Ragib were not satisfied with the conduct of the meeting. One week after the meeting, they submitted a complaint to the chairman of the board of directors, requiring him to invalidate the proceedings of the 21st AGM.

In view of the provisions of the Companies Act, 2017 explain the circumstances in which Mateen and Ragib would succeed in their contention. (06)

(ICAP, CAF 07 Level – Autumn 2015, Q. 6b)

(ICAP Book: Chapter 8 – Practice Question # 17)

Q. 20

The Annual General Meeting of Trade Limited was held at 11:25 a.m. on 10 November 2015. Certain shareholders have lodged following complaints with the company secretary:

(i) Notice of the annual general meeting was not received by them although they are resident in Pakistan and their registered addresses have also been provided to the company.

(ii) Since the meeting could not commence at the scheduled time i.e. 11:00 a.m., it became invalid and should be called again.

(iii) A resolution passed in the meeting was approved by a show of hands. However, a poll should have been carried out.

(iv) Mr . Hamid who voted for a resolution was represented through a proxy which was deposited at 5:01 p.m. i.e. after office hours on 8 November 2015. Since 9 November 2015 was a public holiday, the condition of depositing the proxy at least 48 hours before the commencement of the meeting, was not met.

(v) Mr . Ghulam who holds 100,000 shares was represented by two proxies i.e. Mr. Cassim (75,000 shares) & Mr. Danish (25,000 shares). Only proxy with 75,000 shares was counted for the purpose of voting.

(vi) JKM Limited holding 20,000 shares of the company was represented by Mr. Waheed, who is neither a director nor an employee of JKM Limited.

In the light of the provisions of the Companies Act 2017 you are required to:

(a) Comment on the validity of each of the above complaints.

(b) Describe the circumstances under which a court may declare the resolution(s) passed in the above meeting or the entire proceedings of the meeting as invalid.

(ICAP, CFAP 02 Level – Winter 2015, Q. 12)

(ICAP Book: Chapter 8 – Practice Question # 19)

PART 3 – RESOLUTIONS AND RECORDS

LO 9: RESOLUTIONS:

Passing of resolution by members through circulation:

Members of a **private company** or **unlisted public company** (having upto 50 members) can pass a resolution through circulation, on a special business.

Ordinary business of AGM cannot be passed through circulation.

Rules:

1. Resolution passed through circulation shall be as valid as if passed in a general meeting.
2. Resolution shall be circulated to all members alongwith necessary papers (if any).
3. Resolution shall be signed by the members entitled to receive notice of meeting.
4. Once approved, a member cannot revoke his agreement to such resolution.
5. Such a resolution shall be noted in the minutes of subsequent general meeting.

Filing of Special Resolution:

A copy of **every special resolution** of every company is:

1. authenticated by a Director or Company Secretary.
2. filed with Registrar within **15 days** of passing it.
3. annexed to every copy of articles issued after the date of resolution.
4. sent to members on payment of fee (if requested)

PRACTICE QUESTIONS

Q. 21

The board of directors of Majestic Limited (ML) intends to change the company's name. They are of the view that such a change would help in rebranding and rebuilding the image of the company. In this regard, the board has directed the company secretary to call a general meeting on priority basis in order to obtain members' approval.

Considering the urgency of the matter, company secretary has advised the board that required approval under the law may be taken from the members by getting the resolution passed through circulation.

Required:

Under the provisions of Companies Act, 2017:

(i) advise whether ML can get the resolution passed by its members through circulation. **(02)**

(ii) specify the pre and post-requisites which must be taken care of, in order to ensure that the resolution passed through circulation by members of ML is valid. Also, briefly discuss the requirements related to retention of records in respect of such resolutions. **(05)**

(ICAP, CFAP 02 Level – Summer 2019, Q. 9b)
(ICAP Book: Chapter 8 – Practice Question # 24)

Q. 22

On 26 September 2020, the board of directors of Duck Fertilizers Limited (DFL), a public unlisted company, in its recent board meeting has approved a short term loan to Kitten Limited, one of the associated companies, to meet its working capital requirement, for which shareholders' approval is required. DFL's annual general meeting is scheduled to be held in March 2021.

Under the provisions of the Companies Act, 2017:

(a) briefly discuss the options available to DFL for obtaining shareholders' approval. **(03)**

(b) state the procedure(s) to be followed for obtaining the approval in each option identified in (a) above. **(06)**

(Ignore procedures relating to voting)

(ICAP, CAF 07 Level – Autumn 2020, Q. 9)
(ICAP Book: Chapter 8 – Practice Question # 25)

Q. 23

Tripod Limited (TL), a listed company, intends to change the place of its registered office from Lahore to Peshawar and for this purpose it has obtained approval of the general meeting through special resolution. The directors of TL are of the view that in order to be effective, the special resolution should be filed with the Commission.
However, the company secretary has advised to keep the resolution at the registered office so that anyone who is interested may inspect it.
Briefly discuss the requirement(s) relating to filing/furnishing of special resolution. (04)

(ICAP, CFAP 02 Level – Winter 2019, Q. 2c)
(ICAP Book: Chapter 8 – Practice Question # 26)

LO 10: MINUTES OF GENERAL MEETING, AND RECORDS OF RESOLUTIONS:

Documentation of Minutes of General Meeting:

Every company shall keep a record of:

- minutes of all general meetings alongwith names of participants, and
- copies of all resolutions passed otherwise than at general meeting.

Authentication of Minutes:

Minutes authenticated by the Chairman of the meeting or chairman of the next meeting shall be the evidence of the proceedings at the meeting, unless contrary is proved.

Place and Time of Records:

The records of general meeting (i.e. minutes and resolutions) must be kept from the date of resolution at **registered office** of the company:

- in physical form (for at least **twenty years**), and
- in electronic form (**permanently**)

Inspection of Minutes of General Meeting:

After **07 working days** of a general meeting, any member can inspect minutes of general meeting during business hours without charge. Company may impose reasonable restrictions, however, atleast **02 hours** in each day shall be allowed for inspection.

Copy of Minutes of General Meeting:

After **07 working days** of a general meeting, any member can request company to provide him a copy of minutes on payment of prescribed fee.
Company shall provide a certified copy of minutes within **07 days** of the request.

PRACTICE QUESTIONS

Q. 24

Mr. Dinshaw holding 13.5% shares in ABC Limited, gave notice of a resolution to the company on May 17, 2008, proposing to appoint M & T Associates in place of the existing share registrar of the company. The resolution was to be considered at the annual general meeting scheduled for May 30, 2008. The company could not circulate the proposed resolution among its members.
(i) Evaluate the above situation in the light of the provisions of the Companies Act, 2017. (04)
(ii) Explain whether Mr. Dinshaw is entitled to inspect and require the minutes of general meeting of the company. (04)
(iii) In what manner are the proceedings of the directors or the general meetings required to be recorded and kept by ABC Limited? (04)

(ICAP, CAF 07 Level – Spring 2009, Q. 9a)
(ICAP Book: Chapter 8 – Practice Question # 23)

Q. 25

On 5 December 2016 an urgent request has been received from Farid, a member, for inspection and supply of minutes of the company's fifteenth extraordinary general meeting held on 2 December 2016. (04)

(ICAP, CFAP 02 Level, Winter 2016, Q. 3c)
(ICAP Book: Chapter 8 – Practice Question # 27)

APX 1: OBJECTIVE BASED QUESTIONS AND ANSWERS:

Select the most appropriate answer from the options available for each of the following Multiple Choice Questions. Each MCQ carries ONE mark. These questions are adapted from ICAP's Study Text.

1. A general meeting is a meeting of the shareholders of the company who are entitled by the company's articles to
(a) Borrow money on behalf of the company
(b) Appoint company secretary on behalf of the company
(c) Attend and vote at such meetings
(d) Call annual general meeting

2. Generally a private company is not required to hold a statutory meeting but it shall also be required to hold a statutory meeting if
(a) Such private company decides to liquidate the company
(b) Such private company is a subsidiary of a public company
(c) Such private company converts itself into a public company within one year of its incorporation.
(d) Such private company converts itself into a public company within 06 months of its incorporation.

3. The statutory meeting shall consider and approve report called statutory report which is sent to each member, along with a notice of the statutory meeting
(a) At least twenty one days before the date of statutory meeting
(b) At least seven days before the date of statutory meeting
(c) At least thirty days before the date of statutory meeting
(d) At least fourteen days before the date of statutory meeting

4. The first annual general meeting of a company shall be held
(a) After 16 months from the date of its incorporation
(b) Within 16 months from the date of its incorporation
(c) After 18 months from the date of its incorporation
(d) Within 12 months from the date of its incorporation

5. The SECP, in the case of a listed company and the registrar, in the case of other companies may extend the time for holding of any annual general meeting
(a) Upto a maximum of 30 days
(b) Upto a minimum of 30 days
(c) For 21 days
(d) For 15 days

6. At least 21 days' notice of annual general meeting shall be given to members and in case of a listed company such notice shall also be published in
(a) An Urdu or an English daily newspaper having nationwide circulation
(b) An Urdu and an English daily newspaper having nationwide circulation
(c) An Urdu and an English fortnight newspaper
(d) Any local language and an English fortnight newspaper

7. If members of a listed company, not resident in city where AGM is taking place required the company to provide the facility of video link to attend AGM of the company, then they must fulfil the following condition in order to make such request to be valid
(a) Holding at least 10% share capital
(b) The request must be in written form
(c) The request must be made at least seven days before such meeting
(d) All of the above

8. If the directors do not proceed to call a meeting with in 21 days of filing of the requisition by the members, the requisitionists may call a meeting and that meeting should be held and conducted
(a) Within 21 days from the date of the deposit of the requisition
(b) Within 30 days from the date of the deposit of the requisition
(c) Within 90 days from the date of the deposit of the requisition
(d) Within 120 days from the date of the deposit of the requisition

9. When there are material defects or omission in the notice or the proceedings of the meeting is alleged to be irregular then, following condition(s) must be fulfilled in order to declare such meeting invalid
   (a) Members having 10% or more rights can apply
   (b) Members can apply to the court
   (c) Application must be made within 30 days of the meeting
   (d) All of the above

10. If the required quorum is not present at the meeting within half an hour from the time appointed for the meeting it shall be
    (a) Dissolved in any case
    (b) Adjourned in any case
    (c) Held in any case
    (d) Dissolved, if called upon the requisition of members

11. In any company voting is done by show of hands unless a poll is ordered by chairman of the meeting. On show of hands every member shall exercise
    (a) 1 vote per 10 shares
    (b) 10 votes per share
    (c) 1 vote irrespective of number of shares
    (d) 10 votes irrespective of number of shares

12. A member cannot appoint more than one proxy to attend any one meeting. If more than one proxy is appointed for any one meeting
    (a) All proxies possess same voting rights
    (b) All proxies possess same right to speak
    (c) All appointments of proxies shall be valid
    (d) All appointment of proxies shall be invalid

13. Members of the company can demand a certified copy of the minutes of general meeting, any time after 7 days from meeting, which the company shall provide to them
    (a) Within 7 days of receipt of his request
    (b) Within 14 days of receipt of his request
    (c) Within 30 days of receipt of his request
    (d) Within 60 days of receipt of his request

14. The records of all proceedings of the general meetings must be kept at the registered office of the company in physical and electronic form and it shall be preserved for
    (a) At least 10 years in physical form and permanently in electronic form
    (b) At least 20 years in physical form and permanently in electronic form
    (c) Permanently in physical form and permanently in electronic form for 10 years
    (d) Permanently in physical form and permanently in electronic form for 20 years

15. Members of a private company, or public unlisted company may pass a resolution by circulation signed by all members except
    (a) For special businesses of AGM
    (b) For special businesses of Statutory meeting
    (c) For ordinary businesses of AGM
    (d) For ordinary businesses of Statutory meeting

Suggested Solution

1.	(c)	An AGM is a meeting of the members of the company and they have a right to vote at and attend such meetings.
2.	(c)	When a private company converts itself into a public company within one year of its incorporation it shall also be required to hold such meeting.
3.	(a)	Statutory report shall be send to the members at least twenty one days before the date of statutory meeting.
4.	(b)	The first AGM shall be held within 16 months from the date of its incorporation thereafter at least once in a calendar year.
5.	(a)	The timing of AGM may be extended upto a maximum of 30 days.
6.	(b)	The notice of an AGM shall be published in an Urdu and an English daily newspaper having nationwide circulation.
7.	(d)	All the mentioned conditions must be fulfilled in order to request the company for video link facility.
8.	(c)	The meeting should be held and conducted within 90 days of filing of the requisition.
9.	(d)	In order to declare meeting invalid, members having 10% or more voting rights can apply to court within 30 days of the meeting.
10.	(d)	The meeting shall be dissolved if it was called on the request of the members.
11.	(c)	On show of hands every member shall exercise one vote per share.
12.	(d)	If more than one proxy is appointed for any one meeting, all appointment of proxies shall be invalid.
13.	(a)	The company shall provide the members certified copied within 7 days of receipt of his request
14.	(b)	The records must be kept for at least 20 years in physical form and permanently in electronic form.
15.	(c)	Passing of resolution by the members through circulation is allowed except for the ordinary businesses of AGM.

APX 2: SOLUTIONS TO PRACTICE QUESTIONS:

Q. 1

(a) It should hold statutory meeting latest by 02 October 2021 being earlier of 180 days from commencement of business (i.e. 21 October 2021) and 9 months from incorporation (i.e. 02 October 2021).

(b) It should hold statutory meeting latest by 20 August 2021 being earlier of 180 days from commencement of business (i.e. 20 August 2021) and 9 months from incorporation (i.e. 06 October 2021).

Q. 1A

(i)

Relevant Legal Provision:

A public company is required to conduct its first general meeting i.e. Statutory meeting within **09 months** from the date of incorporation or within **180 days** from date of commencement of business, whichever is earlier.

Decision and Basis of Decision:

- JL has incorporated on 1 February 2018, hence 09 months end on 31 October 2018.
- JL has obtained certificate of commencement of business on 1 April 2018, hence 180 days end on 27 September 2018.
- Earlier of both is 27 September 2018. Therefore, JL should conduct its Statutory Meeting on or before 27 September 2018.
- I do not agree with both proposals of directors.

(ii)

Relevant Legal Provision:

Statutory meeting is not required if first AGM is held earlier.

Decision and Basis of Decision:

In this case, first AGM is held earlier than due date of statutory meeting. Therefore, JL is not required to hold statutory meeting.

Examiners' Comments – Useful Extracts:

Most of the candidates failed to answer this question correctly due to lack of knowledge regarding the time prescribed for holding of statutory meeting. Most candidates stated that the first general meeting (statutory meeting) can be held on either of the two given dates. Moreover, majority of the candidates were unaware of the fact that where an annual general meeting is held prior to the statutory meeting than in that case statutory meeting is not required.

Marking Plan:

(i) ▪ Discussion on the relevant provisions with regard to the conduct of the first general meeting of the company ▪ Conclusion	2.5 marks 0.5 marks
▪ (ii) Opinion on the given situation	1.0 marks

Passing Percentage:
15%

Q. 2

Legal Provisions:

1. First AGM is conducted within 16 months from the date of incorporation.
2. First Financial Statements shall cover a period from date of incorporation till the close of the financial year.

Decision and Basis of Decision:

KTL should conduct its first AGM within 16 months of incorporation i.e. on or before June 30, 2010. However, KTL may obtain extension from Registrar upto 30 days i.e. by July 30, 2010 but it cannot conduct meeting on August 10, 2010.

Although period of first financial statements (i.e. 13 months) exceed 12 months, however, no special permission of Registrar is required for first financial statements.

Q.3

(a)

Relevant Legal Provision:

A company is required to conduct its first AGM within 16 months from the date of incorporation.

Decision and Basis of Decision:

ABC Limited is required to conduct its first AGM by July 31, 2011. (i.e. 1st April 2010 + 16 months).

(b)

Relevant Legal Provision:

A company is required to conduct subsequent AGM within 120 days of close of financial year, and once in each calendar year.

Decision and Basis of Decision:

ABC Limited is required to conduct its second AGM by 28th October, 2012. (i.e. 30th June 2012 + 120 days).

Q.4

(a)

Relevant Legal Provision:

A company is required to conduct its first AGM within 16 months from the date of incorporation.

Decision and Basis of Decision:

XYZ Limited is required to conduct its AGM by 31st December, 2011. (i.e. 1st September 2010 + 16 months).

(b)

Relevant Legal Provision:

A company is required to conduct subsequent AGM within 120 days of close of financial year, and once in each calendar year.

Decision and Basis of Decision:

XYZ Limited is required to conduct its second AGM by 31st December, 2012. (i.e. 30th September 2012 + 120 days, subject to 1 meeting in 2012).

Q.5

Extension upto 30 days may be granted for holding of AGM by Commission (for listed company) or Registrar (for other companies).

Q.6

Special Business:

Every business is considered Special Business except following:

- consideration of financial statements, auditor's report, and directors' report,
- the declaration of dividend
- the election and appointment of directors
- appointment of the auditors and fixation of their remuneration

Examples of Special Business:

- alteration of memorandum and articles,
- investment in associated company, and
- removal of chief executive.

Examiners' Comments:

It was a straightforward question and required the candidates to explain the term "special business". However, only few candidates could explain the term in the light of the Act. The majority relied on guess work and gained no credit.

Q. 7

Types of Special Business:

Every business is considered Special Business except following:

- consideration of financial statements, auditor's report, and directors' report,
- the declaration of dividend
- the election and appointment of directors
- appointment of the auditors and fixation of their remuneration

Examples of special business include alteration of memorandum and articles, investment in associated company, and removal of chief executive.

Requirements in respect of notice containing special business:

Notice of AGM shall annex following regarding special business:

- Draft of special resolution (if any).
- Statement describing all material facts relating to such business.
- Nature of interest of directors whether directly or indirectly (if any).
- If a document is to be approved by general meeting, time and place where document can be inspected.

Examiners' Comments – Useful Extracts:

Generally the students were able to identify types of businesses which are termed as ordinary business. However, most of them could not state the additional formalities which are required to be complied with in respect of notice containing special business.

Marking Plan:

▪ Advice on the types of businesses which would be deemed to be special business	2.5 marks
▪ Discussion on additional formalities to be complied with in respect of notices containing special business	3.5 marks

Passing Percentage:

21%

Q. 7A

(a) In these circumstances, the notice shall be deemed effected and Zahid's claim is not valid

(b) Azam's claim is valid while Chand's claim is not valid.

(c) It will send the notice to official assignee at address provided by him.

Q. 8

(a) This statement is incorrect because:

(i) Only a public company, or a private company which is converted into public company within one year of incorporation is required to hold statutory meeting, and

(ii) Statutory meeting is required to be conducted within 09 months from date of incorporation or within 180 days from date of commencement of business, whichever is earlier.
Further, it will not be conducted if first AGM is conducted earlier.

(b)

This statement is incorrect because in case of unlisted companies, if all the members entitled to attend and vote so agree, an extraordinary general meeting (EGM) may be held at a shorter notice.

Q. 9

(i) Every general meeting other than Statutory Meeting and AGM, is called EOGM.

(ii) Minimum notice period for calling an EOGM is 21 days. If PPL is an unlisted company and all the members entitled to attend and vote so agree, it can conduct its EGM at shorter notice.

Examiners' Comments:

Generally candidates were able to mention that all general meetings of a company other than Annual General Meeting and Statutory Meeting shall be called EOGM. However, some confusion was evidenced in some scripts as few of the candidates declared that such a meeting cannot be held on a shorter notice.

Q.10
Notice of AGM of AL must include following:
1. Date, Hour and Place of the meeting.
2. Nature of each Business to be transacted.
3. Option to provide on demand, facility of video-link for attending the meeting.
4. Members' right to appoint proxy, rights of such proxy and Proxy Form.
5. Number of directors to be elected, and names of retiring directors.

For each special business, following shall be annexed to notice:
1. Statement describing all material facts relating to such business.
2. Nature of interest of directors whether directly or indirectly (if any).
3. If a document is to be approved, time and place where document can be inspected.

Draft of special resolution shall also be included in the notice.

Copies of financial statements, auditor's report, and directors' report are not published in the newspaper (although they are annexed to the notice sent to members).

Examiners' Comments – Useful Extracts:
- *Only 6% of the students obtained passing marks in this question.*
- *Some of the examinees produced the list of normal and special businesses usually transacted at the general meeting.*
- *Some examinees discussed the provision relating to the publication of notice in the newspaper which had no relevance to the requirement of the question.*
- *Many examinees deliberated on the procedure of fixing the number of directors and election of directors, which was not required.*
- *Majority of the examinees did not mention about members' right to appoint proxy and statement of material facts in case of special business.*

Marking Plan:

Identifying information which must be included in the notice of annual general meeting in respect of:	
▪ normal business	4.0 marks
▪ special business	4.0 marks
▪ election of directors including independent director(s)	2.0 marks

Passing Percentage:
6%

Q.11
(a) chairman's decision of not holding a poll is valid if poll was not demanded by members having atelast 10% voting power.
(b) Poll can be delayed after AGM upto 14 days, if it does not relate to election of a chairman or adjournment of meeting.

Examiners' Comments:
Though most of the students gained good marks in both the parts, however, many students stated incorrectly that chairman's decision of not holding the poll was final. Similarly, many students held the incorrect view that under all circumstances, the poll shall be taken forthwith.

Q.12
(a) Mr. Shakeel should have atleast 10% of voting power (individually or alongwith other shareholders).
(b) Yes. He or his representative can scrutinize the votes given on Poll.

Examiners' Comments:
(a) Most of the students mentioned that Mr. Shakeel must hold one-tenth of the shareholding, to demand a poll. This statement was only partially true, as Mr. Shakeel could also have demanded a poll if he had the support of other share holders holding 10% share in aggregate.
(b) Very few candidates could get good marks on this part of the question as most of them either described that decision of chairman shall be final or that the company can provide minutes of meeting to satisfy the member regarding validity of poll.

Q. 13
The resolution shall be deemed to be passed on 31st August 2020 and not on 17th August 2020.

Q. 14
(i)
Notice of every general meeting of FWL must state:
- member's right to appoint a proxy, and
- the right of such proxy to attend, speak and vote in meeting.

A proxy form shall also be annexed to every such notice.

(ii)
AL (a body corporate which is a member of FWL) may authorize through **Board Resolution** any individual to act as its representative in a general meeting of FWL.
Instrument of Power-of-attorney/Proxy shall be under AL's seal and be signed by an officer or an attorney duly authorised by it.

Examiners' Comments – Useful Extracts:
(i) Examinees failed to discuss the basic rights of proxy i.e. to attend, speak and vote at the meeting.
(ii) Examinees could not specify the instrument requirements in this regard.

Marking Plan:

▪	(i) Briefly discussing the matters relating to proxies which must be included in the notice of AGM	2.0 marks
▪	(ii) Description of the procedure which AL should follow in order to represent itself in the AGM of FWL	2.0 marks

Passing Percentage:
45%

Q. 15
(a)
Red Rose Limited can authorize any individual (through Board resolution) to act as its representative in AGM of Green Leaf Limited.
Instrument of Power-of-attorney/Proxy shall be under Red Rose's seal and be signed by an officer or an attorney duly authorised by it.

(b)
An instrument of proxy must be:
- in writing,
- signed by member or his authorized agent.

It must be lodged atleast 48 hours before the time of meeting.

Examiners' Comments:
(a) Many candidates were of the view that a company which is a member of another company may only authorize any of its officials to act as its representative, at the meeting of that other company. In fact, there is no such restriction in the Ordinance which clearly states that any of the company's official or any other person, may act as the Company's representative. Moreover, most of the candidates did not explain that such an authorization requires a resolution of the directors.

(b) Most of the candidates got confused and wrote about the person acting as the proxy instead of providing the characteristics of a proxy instrument, such as:
- *instrument should be in writing and*
- *be under company seal or be signed by an officer or an attorney duly authorized.*

However, the deadline of submission of proxy instrument i.e. not later than forty-eight hours, before the time of the meeting, was correctly answered.

Q. 16

(a) Being a public listed company, the quorum of the meeting is 10 members present personally who represent 25% of the total voting power, either of their own account or as proxies, unless the articles provide for a larger number.

(b) The quorum of the meeting should be present within half an hour from the time for the meeting otherwise the meeting shall be dissolved as it has been called on the requisition of members.

(c) Since chairman of the board of directors cannot attend the meeting therefore, any one of the directors present may be elected to be chairman.

However, if none of the directors is present or is unwilling to act as chairman, the members present shall choose one of the members to be the chairman.

Q. 17

Relevant Legal Provision:

Quorum of a listed company is 10 members (present personally or via video-link) representing 25% voting power (including proxy).

Decision and Basis of Decision:

As only four shareholders attended meeting, therefore, quorum is not present.

If meeting was requisitioned by members:

- If meeting was requisitioned by members and quorum is not present within 30 minutes, meeting shall be dissolved.

If meeting was called by directors:

- If meeting was called by directors and quorum is not present within 30 minutes, meeting shall be adjourned to the same day in the next week, at the same time and place.
- If quorum is again not present at adjourned meeting, 02 members present personally shall be quorum unless articles provide otherwise.

Examiners' Comments:

Most of the students secured high marks. However, many students quoted the entire provisions without clarifying as to how would they apply to the given situation. At least at this level, full marks can only be achieved if the answer is phrased in such a manner as to address the issues that have been referred to in the given situation.

Q. 18

(a)

Relevant Legal Provision:

If quorum of an EGM is not present within 30 minutes, it stands dissolved (if requisitioned by members) or is adjourned (if called by directors).

Decision and Basis of Decision:

Directors should have waited for 30 minutes instead of 15 minutes before deciding to dissolve or adjourn meeting.

(i) in this case, meeting should be dissolved.

(ii) in this case, meeting should be adjourned to next week at the same time and place.

(b) Proxies lodged for general meeting are also valid for adjourned meeting. Therefore, proxy is also entitled to attend, speak and vote at adjourned meeting.

(c) A resolution passed at adjourned meeting shall be effective, but from the day on which it is actually passed, and not on any earlier date.

Q. 19

Directors do not have authority to invalidate the proceedings of a general meeting.

If Mateen and Ragib want to invalidate all or part of proceedings of AGM, they must fulfill following conditions:

- They must have 10% or more voting power.
- They must file petition with Court to declare proceedings of AGM invalid.
- Petition must be filed within **30 days** of the disputed meeting.
- They must prove in the court that there was a material defect or omission in notice, or irregularity in the proceedings of meeting which prevented members from using their rights effectively.

Examiners' Comments:
The performance in this part remained below average. Majority of the candidates failed to specify that in order to succeed, the concerned shareholders must have 10% or more of the voting power and should apply to the Court within 30 days of the impugned meeting for the declaration of its proceedings to be invalid. Further, the candidates were generally unaware of the exact reasons on account of which the court may declare the proceedings of a general meeting as invalid as they gave various reasons which have not been specified in the law.

Marking Plan:

▪ Discussion as regards the authority who may declare the proceedings of a general meeting invalid	2.0 marks
▪ Explanation of the conditions which must be fulfilled in order to declare the proceeding of a general meeting, invalid	4.0 marks

Q. 20

(a)

(i)

Relevant Legal Provision:
A notice of general meeting is deemed to be duly sent if it is sent atleast 21 days before the date of general meeting to members at their registered or communication address in Pakistan.

Decision and Basis of Decision:
If notice has been duly served/sent, then non-receipt of notice by any member shall not invalidate the proceedings of meeting.

(ii)

Relevant Legal Provision:
If quorum is not present within 30 minutes, AGM is adjourned.

Decision and Basis of Decision:
As meeting started within 30 minutes, therefore it is valid.

(iii)

Relevant Legal Provision:
At first instance, resolutions are passed by show of hands. Poll is conducted only if chairman opts or members holding atleast 10% voting power demands Poll before conclusion of general meeting.

Decision and Basis of Decision:
If poll was not opted by Chairman, or was not demanded by members holding atelast 10% voting power, resolution is valid.

(iv)

Relevant Legal Provision:
Proxy Form should be lodged with company atleast 48 hours before the time of meeting.

Decision and Basis of Decision:
As proxy form was submitted late, therefore proxy is invalid. Mr. A was not entitled to attend and vote at general meeting.

(v)

Relevant Legal Provision:
If a member appoints more than one proxies, all proxy forms become invalid.

Decision and Basis of Decision:
Neither of the proxies was entitled to attend and vote at general meeting.

(vi)
Relevant Legal Provision:
A company may authorize (through Board Resolution) any individual to act as his representative in general meetings. Representative may not be a directors, employee or member of the company.

Decision and Basis of Decision:
Representation of Mr. Waheed is valid if approved by resolution of BOD.

(b) Court may declare proceedings of a general meeting invalid, and may direct holding of a fresh general meeting if:
- Members having atleast 10% voting power file petition with Court within thirty days of the disputed meeting, and
- A material defect or omission is proved in notice or irregularity in the proceedings of meeting which prevented members from using their rights effectively.

Examiners' Comments:
(a) The question required the students to comment on five different complaints lodged by the shareholders of a company. Majority of the students provided appropriate comments. The errors noted were as follows:
- *The proxy was deposited less then 48 hours before the meeting and therefore was invalid. Many students were of the opinion that it is required to be filed within 48 hours of the meeting and therefore considered it as valid.*
- *Some of the students were of the opinion that both the proxies should be counted for voting. In fact, if a member appoints more than one proxy then all such proxies become invalid.*
- *About 50% of the students did not know that the Board of Directors can appoint any person to represent the company in another company's meetings, irrespective of whether he is a member or not.*

(b) This was a simple question based on Companies Act 2017, *relating to the circumstances under which a Court may declare the resolution or entire proceedings of an AGM as invalid. Most of the students produced correct answers and many of them secured full marks.*

Marking Plan:

▪ (a) Up to 1.5 marks for discussing the validity of each complaint	7.0 marks
▪ (b) Explanation of the circumstances under which a court may declare a meeting /entire proceedings of the meeting as invalid	4.0 marks

Q.21
(i)
Relevant Legal Provision:
Members of a **private company** or **unlisted public company** (having upto 50 members) can pass a resolution through circulation on a special business.

Decision and Basis of Decision:
As change of name is a special business, therefore, members of ML can pass resolution through circulation if it is an unlisted company.

(ii)
Pre and post-requisites of passing resolution through circulation:
1. Resolution shall be circulated to all members alongwith necessary papers (if any).
2. Resolution shall be signed by all the members entitled to receive notice of meeting.
3. Once approved, a member cannot revoke his agreement to such resolution.
4. Such a resolution shall be noted in the minutes of subsequent general meeting.

Retention of records in respect of resolution:
The records of resolutions must be kept at the registered office of the company in physical form (for at least twenty years), and in electronic form (permanently).

Examiners' Comments:
(i) This part of question was performed well by the examinees.
(ii)
- *Examinees were not able to determine that the resolution was required to be circulated to all members of the company along with necessary papers and was also required to be signed by all the members.*
- *Some of the examinees missed that the resolution passed through circulation was required to be noted at subsequent meeting of the members and was to be made part of the minutes of such meeting.*

Marking Plan:

▪ (i) 01 mark for identification of each condition which company must meet to get a resolution approved by its members through circulation	2.0 marks
(ii) ▪ Discussion on circulating the resolution along with necessary documents and getting it signed by all members of the company ▪ Discussion on regulatory requirements for retention of records	 2.5 marks 2.5 marks

Passing Percentage:
39%

Q. 22
(a)
Relevant Legal Provisions:
1. Directors of a company can call Extraordinary General Meeting to obtain approval of members on a special business.
2. A private or public unlisted company can pass the resolution through circulation (if number of members are upto 50).

Options available to DFL:
Therefore, DFL has following two options:
1. conduct Extraordinary General Meeting to pass the resolution.
2. as DFL is an unlisted company, it can pass the resolution through circulation (if DFL has upto 50 members).

(b)
Procedure for Resolution through EGM:
1. DFL shall send a 21-days' notice to members (a shorter notice can also be given if all members agree).
2. Notice shall include Draft of Special Resolution, and Statement of Material Facts (setting out all the material facts concerning the short term loan, including interest of directors, if any).
3. Members can participate in the meeting personally, through video-link or by proxy.
4. Special resolution (with 3/4th majority) shall be passed at EGM.

Procedure for Resolution through Circulation:
1. Resolution shall be circulated to all members alongwith necessary papers (if any).
2. Resolution shall be signed by all the members entitled to receive notice of meeting.
3. Once approved, a member cannot revoke his agreement to such resolution.
4. Such a resolution shall be noted in the minutes of subsequent general meeting.

Examiners' Comments:
(a) Very few examinees mentioned that DFL, being a public unlisted company, has option to get the shareholders' approval by passing resolution by circulation.
(b)
- *Majority of the examinees were unable to write the steps involved in holding extraordinary general meeting except the requirement of service of 21 days' notice and that a shorter notice may be served in case of an emergency.*
- *Since examinees did not discuss the approval by passing resolution by circulation in (a) above, they failed to cover its requirement in this part.*

Marking Plan:

(a) Describing the options available for obtaining shareholders' approval:	
▪ by calling extraordinary general meeting	1.0 marks
▪ by passing resolution by circulation	2.0 marks
(b) Identifying the procedures to be followed for obtaining shareholders' approval in respect of:	
▪ holding extraordinary general meeting	4.5 marks
▪ passing resolution by the members through circulation	1.5 marks

Passing Percentage:
8 %

Q. 23

Filing to authorities:
A copy of every special resolution (duly authenticated by Director or Company Secretary) is required to be filed with Registrar (NOT with Commission) within 15 days of passing it.

Furnishing to members:
A copy of special resolution is forwarded to members (if requested by them) on payment of fee. It is NOT open for inspection by anyone.

Embodied/Annexed to Articles:
Special resolution shall be embodied in articles, or annexed to every copy of articles issued after the date of resolution.

Examiners' Comments:
- *Examinees correctly stated the requirement to file the special resolution with the registrar. However, they failed to mention that such copy of resolution shall be authenticated by a director or secretary of the company.*
- *Examinees were unable to identify that when articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution.*
- *Examinees also ignored the fact that copy of every special resolution shall be provided to any member upon his request and on payment of prescribed fees.*
- *Few examinees mentioned requirements relating to memorandum of association which was not required.*

Marking Plan:

▪ Discussion on the requirement of filing of special resolution to the registrar	2.0 marks
▪ Discussion on the requirement of furnishing of special resolution to any member	2.0 marks

Passing Percentage:
27%

Q. 24
(i)
Relevant legal provision:
Members having **5% or more voting powers** may give notice of any resolution to be passed atleast 10 days before meeting.

Decision and Basis of Decision:
Mr. Dinshaw has prescribed voting power as well as he has given notice 10 days before AGM. Therefore, company is in violation if it did not circulate the proposed resolution.

(ii)
Relevant legal provision:
Irrespective of %age of shareholding, every member has right to inspect and require copy of minutes of general meeting.

Decision and Basis of Decision:
Inspection: Dinshaw is entitled to inspect minuets of general meeting without charge for atleast two business hours in each day subject to reasonable restrictions as per articles.

Copy: After 07 days of meeting, he can request company to provide certified copy of minutes of general meeting. This copy will be provided to him within 07 days of the request.

(iii)
- Every company is required to maintain records of minutes of all general meetings and directors' meeting.
- The records must be kept at the registered office of the company in physical and electronic form.
- It shall be preserved for at least twenty years in physical form and permanently in electronic form.

__Examiners' Comments:__
Majority of the candidates produced acceptable performance. However, many candidates could not attempt segment (i) of the question properly as they failed to cover some of the important points which they were required to clarify. For example, some of them wrote that Mr. Dinshaw was entitled to give notice of a resolution because he held 13.5% shares, without specifying that members having a minimum of 5% of the voting power can exercise such a right. Similarly, many of them stated that the notice did not reach the company within the prescribed time without specifying that the prescribed time was 10 days. In segment (iii) of the question, large number of students failed to mention that the names of the participants of the meetings are required to be entered in the properly maintained books.

Q. 25
Inspection of minutes:
After 07 days of a general meeting, a member is entitled to Inspect minutes of general meeting. Therefore, Farid can inspect minutes but only on/after December 09, 2016.

Copy of minutes:
After 07 days of a general meeting, a member is entitled to inspect and require a copy of minutes of general meeting. Such copy shall be provided within 07 days of the request. Therefore, Farid can get copy of minutes by December 16, 2016.

__Examiners' Comments:__
The overall performance was good but many students did not read dates given in the question clearly or ignored them altogether. Consequently, they were unable to understand the crux of the matter i.e. the member had requested the inspection and supply of minutes of the meeting within three days whereas the members are entitled to be furnished certified copy of the minutes of the general meeting after seven days.

Marking Plan:

▪ Advice on the earliest date at which a member can inspect or request for a copy of the minutes	2.0 marks
▪ Advice on the earliest date at which RCL is required to furnish a copy of minutes to the above member	2.0 marks

CHAPTER 09

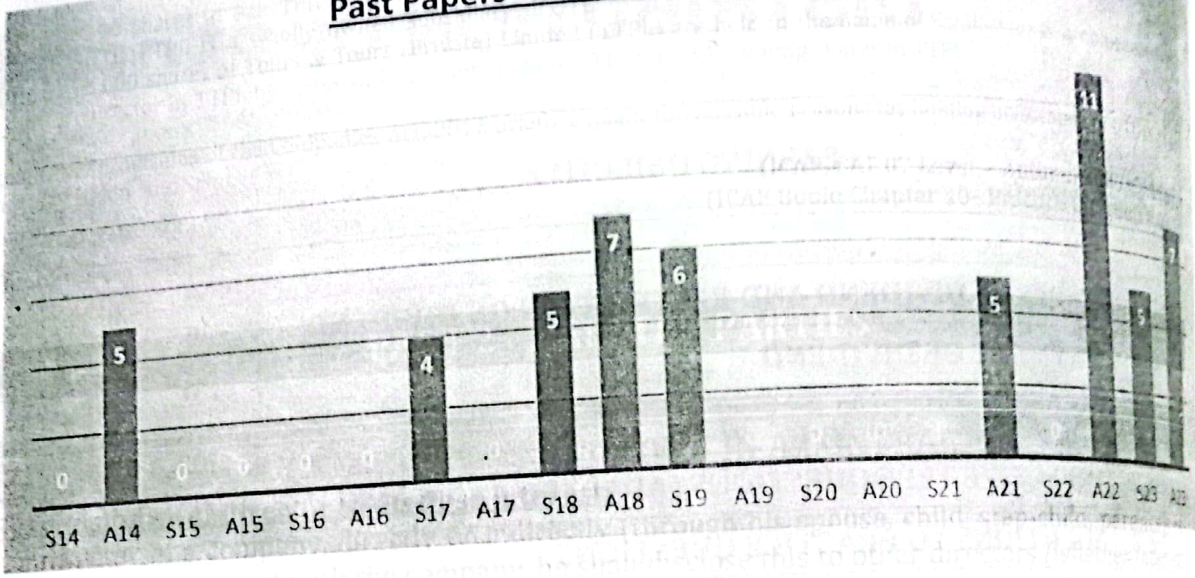
DISTRIBUTION OF PROFITS

LO #	LEARNING OBJECTIVE	ICAP Book Reference	
		Chapter #	Paragraph #
LO 1	TYPES OF DIVIDEND AND RESTRICTION ON DIVIDEND	9	Section 1
LO 2	PAYMENT OF DIVIDEND	9	Section 2

APPENDIX

APX 1	OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT)
APX 2	SOLUTIONS TO PRACTICE QUESTIONS

Past Papers' Trend Analysis [Chapter 9]



Overview of the Chapter:

- ☐ This chapter discusses rules relating to declaration and payment of dividend by a company.

Examinability of the Chapter: ***(considering latest syllabus and testing by ICAP)***

Although, examiner may ask question from any topic in any way. However, based on my past experience:

- Normally, a question of reproduction is asked from this chapter. Sometimes, a case study is also tested.
- 4 – 5 marks' question is expected from this chapter in exam.

In-depth analysis of examinability with particular reference to Spring 2024 attempt will be explained in class.

LO 1: TYPES OF DIVIDEND AND RESTRICTION ON DIVIDEND:

Dividend:

"Dividend is any payment by a company to its shareholders out of its distributable profits"

Implied power to declare dividend:

Every company has an implied power to pay dividends to its shareholders, unless company's memorandum and articles restrict it (e.g. in case of association not for profit).

Types of Dividend:

Companies normally make one dividend payment each year, but sometimes dividend can be paid more than once.

In this context, there are two types of dividend:

1. Interim Dividend:
   This is the dividend which is paid before the end of the year, on the basis of quarterly or half-yearly financial statements. It is approved/declared by Board of Directors.

2. Final Dividend:
   This is the dividend which is paid after the end of the year, on the basis of annual financial statements. This is recommended by Directors but approved/declared by Members in annual general meeting by ordinary resolution.

Restriction on Declaration of Dividend:

1. Dividend shall not be paid out of profits from disposal of immovable property or assets of capital nature, unless
   a. it is ordinary business of company to purchase and sell such property or assets, and
   b. company has set-off such profits against losses arising from sale of such property or assets.
2. Dividend shall not be paid out of unrealized gain on investment property.
3. Members can only accept, reject or reduce dividend. They cannot increase the amount of dividend proposed by directors.

> **Study Tip – Definition of Investment Property**
> Investment property means immovable property which is kept for gain in market value, or to give on rent to others. As per accounting rules, increase in market value of such properties can be recorded as income in income statement. However, as such income is unrealized, it cannot be paid as dividend.

PRACTICE QUESTIONS

Q.1

Under the provision of the Companies Act, 2017 briefly describe the restrictions, if any, with regard to the declaration of final dividend by a company listed on stock exchange.

(05)
(ICAP, CAF 07 Level – Spring 2018, Q. 9b)
(ICAP Book: Chapter 9 – Practice Question # 01)

Q.2

(a) ABC Limited is engaged in manufacturing of trade soaps. During the year ended June 30, 2018 it made a net profit of 48 million which is composed of following:
(i) Operating loss Rs. 4 million
(ii)Gain from sale of land Rs. 52 million.
Can company use profit for the year to pay divided. If so, upto what amount?

(b) ABC Limited has accumulated profits (retained earnings) of Rs. 520 million including net gain on disposal of immovable properties amounting to Rs. 150 million. This net gain of Rs. 150 million relates to two disposals, one resulting in a gain of Rs. 200 million and the other resulting in a loss of Rs. 50 million.
Can company use profit for the year to pay divided. If so, upto what amount?

(ICAP Book: Chapter 9 – Example # 01)

Q. 3
Kashif Limited (KL) bought a property for capital appreciation (i.e. an investment property) for Rs. 50 million. At year end the property was revalued to Rs. 58 million using fair value model under IAS 40 and a gain of Rs. 8 million was recognised in profit or loss.
Can KL pay dividend out of this gain of Rs. 8 million?

(ICAP Book: Chapter 9 – Example # 02)

Q. 4
Explain whether or not the following statements are in accordance with the provisions of the Companies Act, 2017. Support your answer with reasons.
"There is no restriction on the declaration of dividend and the chief executive may declare dividend in the general meeting of the company out of any kind of profit."

(03)
(ICAP, CAF 07 Level – Autumn 2010, Q. 4b)
(ICAP Book: Chapter 9 – Practice Question # 02)

Q. 5
The board of directors of Dinar Ltd, a listed company, had recommended a final dividend @ 100% for the year ended June 30, 2008. Just a week after the notice for AGM had been dispatched, the company suffered huge losses due to certain unanticipated events and incurred heavy liabilities. The company is now considering the following options:
(i) Reducing the dividend to 25%.
(ii) Deferring the payment of 75% of the dividend, for six months.
Explain whether the company can exercise the above options, under the Companies Act, 2017.

(04)
(ICAP, CAF 07 Level – Autumn 2008)
(ICAP Book: Chapter 9 – Practice Question # 08)

LO 2: PAYMENT OF DIVIDEND:

Manner of Payment: *(i.e. how to pay)*

	Listed Company	Unlisted
Cash Divided	A listed company shall pay cash dividend only in electronic form by transferring it into the bank account specified by shareholder.	An unlisted company shall obtain mandate from its shareholders to pay divided in any of following three modes i.e. 1. Electronic transfer into bank account specified by shareholder. 2. Dividend Warrant. 3. Cross cheque. *[shareholder can change mandate subsequently through written request]*
In Kind Divided	A Listed company can pay dividend in the form of shares of a listed company.	Not allowed.

Exam Tip – Dividend Warrant
Dividend Warrant is like a crossed cheque (that shows a shareholder is entitled to dividend). It can be credited into bank account of shareholder.

Who will pay:
A company may appoint a **paying agent** for distribution of dividend payable in cash. A bank need not appoint a paying agent.

"Paying Agent" means a bank or any entity including a share registrar and a central depository appointed by a company and having relevant approval of SBP for making payment of cash dividend directly into the designated bank account of entitled shareholder.

Whom to Pay:
Any dividend declared by a company must be paid to its registered shareholders or to their order.

Timing of Payment:
Company is required to pay dividend within **10 working days*** from date of declaration.

- Final dividend is deemed to have been declared on the date of the AGM in which it is approved.
- Interim dividend is deemed to have been declared:
  - on date of board meeting in which it was approved (in case of **no book-closure**), or
  - on commencement of book closure for this purpose (in case of **book-closure**). Book closure must be started within **15 days** of approval of divided by directors.

**Working days means any days on which banks are open for business.*

Book Closure: *(or closure of register of shareholders/debenture-holders)*
Book closure means period during which a company shall not handle requests to transfer shares to determine entitlement of shareholders to receive notice of general meeting and dividend.

A company has power to close books:

- for any period(s) but maximum for **30 days** in whole year. On application by company, Commission may extend this period for further **15 days.**
- by giving alteast **7 days'** prior notice to members. In case of listed company, this notice shall also be published in one Urdu and one English daily newspaper having wide circulation.

Same provision applies to closure of register of **debenture-holders**. Penalty of Level 2 on violation.

Consequences of Delay in Payment:
If dividend is not paid within prescribed time, chief executive of company shall be:

1. **fined** for an amount upto **05 million** rupees, and
2. **imprisonment** for a term upto **02 years**, and
3. **ineligible** to become a director or chief executive of any company upto a period of **05 years.**

Withholding of Dividends:

In following cases, Chief Executive shall not be liable and company may withhold dividend after obtaining approval of Commission within **45 days** of declaration of dividend:

1. When there is a dispute regarding right to receive dividend.
2. When the dividend is lawfully set-off by the company against sum recoverable from shareholders.
3. When a shareholder gave instructions to the company regarding payment of dividend and those instructions cannot be followed.
4. When dividend cannot be paid because of operation of law.
5. If non-payment of dividend or non-posting of warrant was not due to any default on part of the company.

Company may also withhold dividend if a member has not provided complete information/documents as specified by Commission (Approval of SECP is not required in this case).

PRACTICE QUESTIONS

Q. 6

On 31 July 2015, the Directors of Clove Engineering Limited (CEL), a listed company, declared an interim dividend of Rs. 5 per share. However, before making payment of the dividend, the company suffered huge losses due to a massive fire in the factory. The CFO has informed the board of directors about CEL's inability to pay the dividend in time.

Under the provisions of the Companies Act, 2017 briefly describe:

(a) When an interim dividend is deemed to have been declared by CEL. (02)

(b) The consequences of non-payment of dividend within the stipulated time. (03)

(c) The circumstances under which CEL may not be responsible to pay dividend to certain shareholders. (05)

(ICAP, CAF 07 Level – Autumn 2015, Q. 9)
(ICAP Book: Chapter 9 – Practice Question # 07)

Q. 7

On 18 September 2018, the directors of Ashanti Limited (AL), a listed company, declared an interim dividend of Rs. 5 per share and announced book closure from 28 September 2018 to 3 October 2018, both days inclusive.

Under the provisions of the Companies Act, 2017 briefly describe when AL should pay the above dividend. Also state any four circumstances in which AL may not be considered to have committed an offence for non-payment of dividend. (07)

(ICAP, CAF 07 Level – Autumn 2018, Q. 8b)
(ICAP Book: Chapter 9 – Practice Question # 04)

Q. 8

Explain the exception to the following provisions as specified under the Companies Act, 2017.

"Where a dividend is declared by a company but is not paid within the period specified in the Companies Act 2017, the chief executive of the company shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to five million rupees." (05)

(ICAP, CAF 07 Level – Spring 2011, Q. 3c)
(ICAP Book: Chapter 9 – Practice Question # 06)

Q. 9

The Board of Directors of Giant Industries Limited (GIL), a listed company, in their meeting held on 25 February 2020 had approved 30% interim cash dividend for the shareholders. While approving the dividend payment, the board had authorised to adjust dividend payable to one of the shareholders, Kamran Ahmed, against the amount due from him.

Under the provisions of the Companies Act, 2017:

(a) state when an interim dividend is deemed to have been declared and the responsibilities of GIL regarding its payment (04)

(b) identify the circumstances under which the directors may withhold/adjust the payment of dividend. (02)

(c) list the steps which GIL would be required to take, for adjustment of dividend payable to Kamran Ahmed against the amount due from him. (02)

(ICAP, CAF 07 Level – Spring 2020, Q. 8)
(ICAP Book: Chapter 9 – Practice Question # 05)

APX 1: OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT):

Select the most appropriate answer from the options available for each of the following Multiple Choice Questions. Each MCQ carries ONE mark. These questions are adapted from ICAP's Study Text.

The chief executive officer of every company is responsible to make the payment of final cash dividend within a period of __________ from the date of its declaration.
(a) 30 calendar days
(b) 30 working days
(c) 10 calendar days
(d) 10 working days

A company may, on giving not less than ______ previous notice close its register of members, for any period or periods not exceeding in the whole __________ in each year.
(a) 7 days and 14 days
(b) 7 days and 30 days
(c) 15 days and 30 days
(d) 15 days and 45 days

The amount of final dividend is proposed by directors and approved by
(a) Members in AGM of the company
(b) Auditors in AGM of the company
(c) CEO in BOD meeting of the company
(d) Members in EGM of the company

Interim dividend may be proposed and approved before the end of the year by the
(a) Directors of the company
(b) Chairman of the company
(c) Chief Executive of the company
(d) None of the above

The dividend is proposed by the directors. The members may
(a) Reduce the dividend
(b) Accept the dividend
(c) Reject the dividend
(d) All of the above

Dividend warrants are a type of a crossed cheque and can be credited in to bank account of
(a) Creditor of the company
(b) Auditor of the company
(c) Member of the company
(d) Director of the company

Who is responsible in case of default regarding payment of dividend to member?
(a) Director Finance of the company
(b) BOD of the company
(c) CEO of the company
(d) Chairman of the company

In any case, the members of the company cannot
(a) Reject the amount of dividend proposed by directors
(b) Accept the amount of dividend proposed by directors
(c) Decrease the amount of dividend proposed by directors
(d) Increase the amount of dividend proposed by directors

9. In case of delay in payment of dividend, Chief executive of the company may be imprisoned for a term not exceeding two years and he may be fined for an amount
(a) Upto Rs. 50 million
(b) Upto Rs. 5 million
(c) Minimum Rs. 5 million
(d) Minimum Rs. 50 million

10. In case of default regarding period of payment of dividend, Chief executive of the company will be fined and imprisoned for a term which may extend to two years. He shall further be ineligible to become a director or chief executive of
(a) Any company for the next five years
(b) Any company for the next ten years
(c) Any holding company for the next five years
(d) Any subsidiary company for the next ten years

Suggested Solution

1.	(d)	Within 10 working days. [Regulation 3]
2.	(b)	A company may, on giving not less than 7 days' previous notice close its register of members, for any period or periods not exceeding in the whole 30 days in each year.
3.	(a)	The amount of final dividend will be approved by the members in Annual General Meeting of the company
4.	(a)	The directors of the company may propose and approve interim dividend before the end of the year
5.	(d)	The members may reduce, accept or reject the dividend as proposed by the director
6.	(c)	Dividend warrants can be credited into the bank account of member of the company
7.	(c)	In case of default regarding payment of dividend, Chief Executive of the company may be fined
8.	(d)	Members cannot resolve to increase the amount of dividend as proposed by directors
9.	(b)	Chief executive of the company may be fined for an amount upto Rs. 5 Million along with imprisonment for a term which may extent to two years
10.	(a)	Chief executive shall be ineligible to become a director or CEO of any company for the next five years

APX 2: SOLUTIONS TO PRACTICE QUESTIONS:

Q.1

1. Dividend shall not be paid out of profits from disposal of immovable property or assets of capital nature, unless
   a. it is ordinary business of company to purchase and sell such property or assets, and
   b. company has set-off such profits against losses arising from sale of such property or assets.
2. Dividend shall not be paid out of unrealized gain on investment property.
3. Members can only accept, reject or reduce dividend. They cannot increase the amount of dividend proposed by directors.

Examiners' Comments:
Majority of the students attempted it in an average manner was they produced incomplete/partly correct answers

Marking Plan:

▪ Discussing restrictions with regard to declaration of dividend by a company listed on stock exchange	5.0 marks

Passing Percentage:
24%

Q. 2
(a)
Relevant Legal Provision:
Profit from sale of immovable property cannot be paid as divided.

Decision and Basis of Decision:
Net profit of ABC Limited (Rs. 48 million) includes profit from sale of land (Rs. 52 million) which is profit from sale of immovable property. Therefore ABC Limited cannot pay any divided out of this profit.

(b)
Relevant Legal Provision:
Profit from sale of immovable property cannot be paid as divided.

Decision and Basis of Decision:
Accumulated Profit of Rs. 520 million includes net profit from sale of immovable properties of Rs. 150 million. Therefore, company cannot pay divided out of this profit. Company can pay divided only from Rs. 370 million (= 520 – 150).

Q.3
Relevant Legal Provision:
Unrealized gain on investment property cannot be paid as divided.

Decision and Basis of Decision:
Gain of Rs. 8 million is due to revaluation adjustment and is unrealized, therefore no divided can be paid out of this profit.

Q.4
The statement is incorrect because of following errors.
1. There are restrictions on declaration of divided i.e. divided cannot be paid:
   a. out of profit from sale of immovable property or assets of capital nature, and
   b. from unrealized gain on investment property.
2. Chief Executive does not declare dividend. Dividend is recommended by directors and approved by members in AGM.

Q. 5

(i)

Relevant Legal Provision:

Members can accept, reduce or reject dividend.

Decision and Basis of Decision:

Therefore, dividend can be reduced by members in general meeting to 25%.

(ii)

Relevant Legal Provision:

Once a dividend has been declared, Chief Executive of the company is responsible to pay it within prescribed days (i.e. 10 days) of its declaration, unless it is withheld in certain specified situation.

Decision and Basis of Decision:

Suffering of loss is not a valid reason to withheld divided and it cannot be deferred in this case.

Examiners' Comments:

This question offered two options to converse i.e. reduction of dividend and deferment of dividend. There were candidates who appeared not to recognize any distinction between the two options and wrongly concluded that both the options can be exercised with the approval of members.

Only a few candidates were able to describe that once the dividend is recommended by the Board of Directors, it may be reduced by approval of members in the AGM but it shall not be lawful for the directors to defer its payment for more than specified period. Hence the company cannot defer it for six months.

Q. 6

(a)

Interim dividend is deemed to have been declared:

- on commencement of book closure for this purpose (in case of book-closure), or
- on date of board meeting in which it was approved (in case of no book-closure).

(b)

If dividend is not paid within specified days of its declaration, chief executive of company shall be:

1. fined for an amount upto five million rupees, and
2. imprisonment for a term upto two years, and
3. ineligible to become a director or chief executive of any company upto a period of five years.

(c)

In following cases, the company may withhold dividend after obtaining prior approval of Commission within 45 days of declaration of dividend:

1. **When there is a dispute regarding right to receive dividend.**
2. **When the dividend is lawfully set-off by the company against sum recoverable from shareholders.**
3. **When a shareholder gave instructions to the company regarding payment of dividend and those instructions cannot be followed.**
4. **When dividend cannot be paid because of operation of law.**
5. **If non-payment of dividend or non-posting of warrant was not due to any default on part of the company.**
6. **If member has not provided complete information/documents as specified by Commission.**

Examiners' Comments:

(a) The performance in this part remained poor. Majority of the candidates seemed to be unaware of the timing of the declaration of interim dividend and gave answers based on general perception. In many cases, they confused the declaration of interim dividend with the payment of dividend. Some candidates wrote that interim dividend is deemed to be declared on the last day of the quarter or half year as the case may be while many others stated that interim dividend is paid in the middle of the financial year.

(b) The performance in this part was satisfactory. However, some of the candidates were of the opinion that directors of the company would be penalized for non-payment of dividend whereas in this case the responsibility lies with the Chief Executive of the Company.

(c) This part of the question was also answered well by majority of the candidates. However, many candidates did not explain that prior approval of Commission is required for withholding dividend.

Marking Plan:

(a)	
▪ Identifying the date on which interim dividend is deemed to have been declared	2.0 marks
(b)	
▪ 1.5 marks for briefly describing each consequence for the non-payment of dividend within stipulated time	3.0 marks
(c)	
▪ Explaining the condition which need to be fulfilled while seeking Commission's approval for withholding dividend payment to certain shareholders	2.5 marks
▪ Up to 0.5 mark for briefly describing each situation under which CEL may not be responsible to pay dividend to certain shareholders	2.5 marks

Q. 7

When to Pay Dividend:

Relevant Legal Provision:

An interim dividend must be paid within specified days (i.e. 10 wording days) of its declaration. Date of declaration of interim dividend is the date of commencement of book-closure.

Decision and Basis of Decision:

Date of declaration of dividend in this case is 28 September, therefore, AL should pay divided by 07 October 2018.

Circumstances when non-payment of dividend is not offence:

In following cases, AL may withhold dividend after obtaining prior approval of Commission within 45 days of declaration of dividend:

1. When there is a dispute regarding right to receive dividend.
2. When the dividend is lawfully set-off by the company against sum recoverable from shareholders.
3. When a shareholder gave instructions to the company regarding payment of dividend and those instructions cannot be followed.
4. When dividend cannot be paid because of operation of law.
5. If non-payment of dividend or non-posting of warrant was not due to any default on part of the company.
6. If member has not provided complete information/documents as specified by Commission.

Examiners' Comments:

The performance in this question was very good and most of the candidates scored high/full marks.

Marking Plan:

▪ Brief explanation of the time period within which Ashanti Limited should pay the interim dividend	3.0 marks
▪ 01 mark for stating each circumstance	4.0 marks

Passing Percentage:
59%

Q. 8

In following cases, Chief executive will not be liable and the company may withhold dividend after obtaining prior approval of Commission within 45 days of declaration of dividend:

1. When there is a dispute regarding right to receive dividend.
2. When the dividend is lawfully set-off by the company against sum recoverable from shareholders.
3. When a shareholder gave instructions to the company regarding payment of dividend and those instructions cannot be followed.
4. When dividend cannot be paid because of operation of law.
5. If non-payment of dividend or non-posting of warrant was not due to any default on part of the company.
6. If member has not provided complete information/documents as specified by Commission.

Q. 9

(a)

Declaration of Interim Dividend:

Interim dividend is deemed to have been declared:

- on commencement of book closure for this purpose (in case of book-closure), or
- on date of board meeting in which it was approved (in case of no book-closure).

Responsibility for payment:

GIL is responsible to pay divided within specified period (i.e. 10 days) from date of declaration of dividend which is 2? February (assuming no book-closure) in this case.

In case of book closure, GIL shall ensure that book closure starts within 15 days of approval of interim divided by the board.

(b)

In following cases, Chief executive will not be liable and the company may withhold dividend after obtaining prior approval of Commission within 45 days of declaration of dividend:

1. When there is a dispute regarding right to receive dividend.
2. When the dividend is lawfully set-off by the company against sum recoverable from shareholders.
3. When a shareholder gave instructions to the company regarding payment of dividend and those instructions cannot be followed.
4. When dividend cannot be paid because of operation of law.
5. If non-payment of dividend or non-posting of warrant was not due to any default on part of the company.
6. If member has not provided complete information/documents as specified by Commission.

(c)

1. Sum due from Kamran Ahmed must be lawfully recoverable from him.
2. GIL must obtain approval from Commission.

Examiners' Comments:

(a)

- *Most of the examinees, without paying any heed to the requirement of the question, mixed up the provisions of declaration of interim dividend with the payment of dividend.*
- *With regard to the responsibilities of GIL for the payment of interim dividend, examinees failed to mention that since dividend was payable in cash, it was to be paid through electronic mode, directly into the bank account designated by the entitled shareholder.*

(b) This part was well attempted.

Marking Plan:

Stating the provisions related to: ▪ declaration of interim dividend ▪ the responsibilities of the company regarding its payment	 2.0 marks 2.0 marks
▪ (b) Up to 0.5 mark for identifying each situation under which the company may withhold the payment of dividend	2.0 marks
▪ (c) Up to 01 mark for mentioning each step required to take for adjustment of dividend payable to Kamran Ahmed	2.0 marks

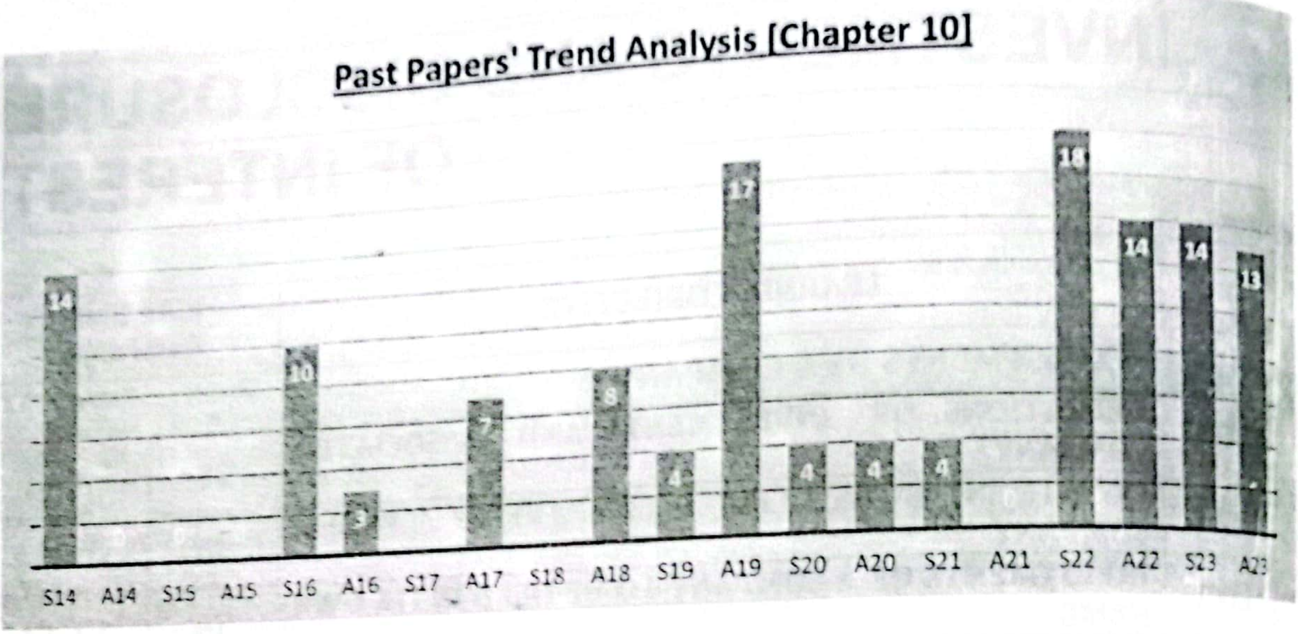
Passing Percentage:

17%

CHAPTER 10

INVESTMENTS AND DISCLOSURE OF INTEREST

LO #	LEARNING OBJECTIVE	ICAP Book Reference	
PART 1 – INVESTMENTS BY A COMPANY		Chapter #	Paragraph #
LO 1	DEFINITIONS OF "INVESTMENT" AND "ASSOCIATED COMPANY"	10	1.1
LO 2	INVESTMENT IN ASSOCIATED COMPANY BY A PUBLIC COMPANY	10	1.2
LO 3	INVESTMENTS OF A COMPANY TO BE HELD IN ITS OWN NAME	10	1.3, 1.4
PART 2 – RELATED PARTIES			
LO 4	DISCLOSURE OF DIRECTORS' INTEREST IN A CONTRACT	10	2.1, 2.2, 2.3
LO 5	RELATED PARTIES, AND TRANSACTIONS	10	2.4
APPENDIX			
APX 1	OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT)		
APX 2	SOLUTIONS TO PRACTICE QUESTIONS		



Overview of the Chapter:

- ☐ This chapter discusses rules relating to making transactions with Associated Companies, and Individuals directly or indirectly relating with company.

Examinability of the Chapter: ***(considering latest syllabus and testing by ICAP)***

Although, examiner may ask question from any topic in any way. However, based on my past experience:

- Both types of questions may be asked from this chapter i.e. question of reproduction as well as case study.
- 6 – 8 marks' question is expected from this chapter in exam.

*In-depth analysis of examinability with particular reference to **Spring 2024 attempt** will be explained in class.*

PART 1 – INVESTMENTS BY A COMPANY

LO 1: DEFINITIONS OF "INVESTMENT" AND "ASSOCIATED COMPANY":

Investment:

'Investment' includes **equity, loans/advances, and guarantees** by whatever name called.
Normal trade credit is not considered as an Investment.

Associated Company/Undertaking:

Any two or more companies or undertakings are associated if they are interconnected with each other in following manner:

1) If a person who is the owner, partner, director or holder of 20% or more voting power in a company/undertaking **is also** the owner, partner, director or holder of 20% or more voting power in another company/undertaking.
   Shares owned by spouse or minor child shall be assumed to be owned by that person.
2) If companies or undertakings are under common management or control, or one is the subsidiary of another.
3) If the undertaking is a modaraba managed by the company

Exceptions:

Following directors/shares shall not be considered to determine status of Associated Company:

- **Independent** director.
- Director **nominated** by the Federal or Provincial Government, or a financial institution directly or indirectly owned or controlled by Federal or Provincial Government.
- Shares owned by the **National Investment Trust**, or a financial institution directly or indirectly owned or controlled by the Federal Government or a Provincial Government.
- Shares registered in the name of a **central depository** but not beneficially owned by it.

Exam Tips

1. If you are asked in exam to define "associated company/undertaking", also include exceptions in definition.
2. Non-voting/Preference shares are not considered in determining status of associated company.
3. Modaraba is an Islamic financing activity, a setup created to ensure interest free financing. A public company (Modaraba Management Company) is established to float Modarabas which are separate legal entities.

PRACTICE QUESTIONS

Q. 1

Discuss the nature of relationship between companies/undertakings in following case.
Azam is a director in ABC Limited, a public company limited by shares. He is also a director in DEF Limited. Azam is also a partner in a partnership firm named GHI Enterprises

(ICAP Book: Chapter 10 – Example # 01)

Q. 2

Discuss the nature of relationship between companies/undertakings in following case.
Babar is director in ABC Limited and he is also owner of more than 20% shares of JKL (Private) Limited.

(ICAP Book: Chapter 10 – Example # 02)

Q. 3

Discuss the nature of relationship between companies in each of the following cases:
(a) ABC Limited is holding company of DEF Limited and KLM Limited.
(b) National Investment Trust owns 25% shares in ABC Limited and 30% shares in XYZ Limited.
(c) Saima is director in ABC Limited and she is also independent director appointed in XYZ Limited.

(ICAP Book: Chapter 10 – Example # 03, 04, 05)

LO 2: INVESTMENT IN ASSOCIATED COMPANY BY A PUBLIC COMPANY:

Generally, directors have power to make investment in a company through their board meeting but for investment in associated company, Special Resolution of members is required.

Conditions (or restrictions) for investment in associated company/undertaking:

A Public Company can invest in its associated company if following conditions are met:

1. Approval of members is obtained by passing **special resolution**.
2. Special resolution shall indicate nature, period, amount of investment, and other terms and conditions of investment.

If investment is in the form of **loan or advances**, public company shall also meet following **additional conditions:**

3. Investment shall be made through a **written agreement.** This agreement shall include nature, purpose, period, rate of return, fee or commission, repayment schedule for principal and interest, security, and penalty clause in case of default. *These shall be in accordance with approval of members in general meeting.*
4. Rate of return on investment shall not be less than the **borrowing cost** of investing company (or such **higher** rate as may be specified by the Commission).
5. Directors of investing company shall certify that the investment is made after **due diligence** of borrowing company, and that borrower has ability to repay the loan as per the agreement.
6. Return shall be **recovered on regular basis** in accordance with the terms of the agreement. Otherwise, directors shall be personally liable to make the payment.

Subsequent change in amount, or the terms and conditions shall also be made by a special resolution.

Exception:

Requirements of passing Special Resolution does not apply if investment is made by a private company.

Records:

Every company shall maintain and keep at its registered office a register of investments in associated companies and undertakings containing such particulars as may be specified.

PRACTICE QUESTIONS

Q.4

Ironside Limited (IL) owns 51% voting shares in Snow Storm Limited (SSL) and 52% voting shares in Flipper (Pvt) Limited (FPL). SSL intends to make an investment of Rs. 200 million in FPL.
Under the provisions of the Companies Act, 2017:
(i) State the type of relationship, if any, which exists between SSL and FPL. (01)
(ii) Describe the conditions which SSL must fulfill before making any investment in FPL. (05)

(ICAP, CAF 07 Level – Spring 2016, Q. 9a)
(ICAP Book: Chapter 10– Practice Question # 02)

Q.5
Kalaam Limited (KL) is considering the following options to invest its excess funds:

(i) Acquire 8% shareholdings in Lighter Oil Limited (LOL) for Rs. 120 million. LOL is a growing company and is expected to fetch higher returns in futures.
(ii) Grant a loan of Rs. 100 million to Monsoon (Private) Limited (MPL) for launching a new product. The loan would carry interest at the rate prevailing in the market. KL currently holds 25% of MPL's paid-up capital.

Under the provisions of the Companies Act, 2017 specify the condition(s) which KL must fulfill before opting for any of the above investment options.
(07)
(ICAP, CAF 07 Level - Autumn 2019, Q. 8a)
(ICAP Book: Chapter 10- Practice Question # 01)

LO 3: INVESTMENTS OF A COMPANY TO BE HELD IN ITS OWN NAME:

Investments of a Company to be Held in its own Name:
All investments of a company shall be owned and held by a company **in its own name.**

Exceptions:
1. A holding company may hold its shares in a subsidiary company in the **name of a nominee member** to ensure that members of subsidiary company do not fall below the statutory limit.
2. If a company appoints or elects a **nominated director** in another company, such company may register or hold shares in other company in the name of nominee alone or jointly with nominee, but only upto the value of qualification shares required to be held by a director.
3. A company may hold or register securities in the name of **central depository company.**

Register for "investments not held by company in its own name":
A company shall maintain a "register for investments not held by company in its own name" which shall contain **nature, value and other particulars** as may be necessary to identify such shares.

Inspection of Register:
- This register shall be open for inspection by **any member** of company **free of cost** for atleast **two business hours in a day.** The company may impose reasonable restrictions on the inspection.
- **Other persons** may inspect the register on payment of **fee** prescribed by company.
- If any inspection is refused, Registrar may, on an application, direct immediate inspection.

Copy of Register:
Any member can request copy of register, which shall be issued to him within **7 days,** on paying fee fixed by company.

PRACTICE QUESTIONS

Q.6
A company puts its invested securities in central depository. Is it allowed to do so?
(ICAP Book: Chapter 10 – Example # 08)

Q.7
Is ABC Limited allowed to transfer its shares in the name of other person(s) in following cases:
(a) ABC Limited has wholly owned subsidiary (100% shareholding) i.e. XYZ Limited. XYZ Limited is public unlisted company and it must have at least three members.
(b) ABC Limited has invested in 15% shares of XYZ Limited and want to nominate Mr. Afzal as director. As per articles of XYZ Limited, only a person who holds at least 10,000 shares (qualification shares) may become the director of the company.
(ICAP Book: Chapter 10 – Example # 06, 07)

Q.8
Naseer, a non-executive director of Oliver Travels Limited (OTL), while reviewing details of investments made by OTL, has shown his concerns on the following shares that are not held in the name of OTL:

(i) 500 shares in Pak Travels (Private) Limited (PTPL) are held in the name of Rahim who is an employee of OTL. PTPL is a wholly owned subsidiary of OTL. (02)

(ii) 5,000 shares of Tours & Tours (Private) Limited (TTPL) are held in the name of Sami, who is a non-executive director in TTPL by virtue of OTL's nomination. OTL owns 30% voting shares in TTPL. (02)

Under the provisions of the Companies Act, 2017 briefly explain the possible reasons for holding investment of OTL in the name of Rahim and Sami.

(ICAP, CAF 07 Level – Autumn 2020, Q.11a)
(ICAP Book: Chapter 10– Practice Question # 03)

PART 2 – RELATED PARTIES

LO 4: DISCLOSURE OF DIRECTORS' INTEREST IN A CONTRACT:

Responsibility of director to disclose interest:

If a director of a company, directly or indirectly (through his spouse, child, step-child, parents), is interested in a contract with the company, he shall disclose this to other directors *(whether interest is created before or after the contract)*.

If majority of directors are interested in a contract/arrangement, this matter shall be approved in general meeting.

Timing of Disclosure:

If transaction require approval of directors:

- Director shall make the disclosure at the meeting of the board of directors at which the contract is first time considered.
- If director became interested after first time consideration, director shall make disclosure in the first board meeting after he became interested.

If transaction does not require approval of directors:

Notice of interest will be given in the first meeting held after the transaction is entered into.

Prohibitions on interested director:

1. Interested director shall not participate in discussion of the matter in which he is interested.
2. He shall not be counted in quorum for that part of the meeting.
3. He shall not vote on such matter. If he votes, his vote shall be void.
4. In case of **listed company,** interested director shall not be present at the board meeting while that matter is being considered.

However, such prohibitions do not apply:

- on directors of a private company (which is neither a subsidiary nor a holding of public company), and
- on contract of indemnity, in which a director suffers loss as surety of company, provided transaction (because of which liability arose) was approved by the board or members of the company.

General Notice of Interest:

Instead of giving a separate notice for each transaction, a director may give a general notice regarding his interest that "he is a member/director/partner in another business and he should be treated as interested in every contract/arrangement made with that business".

Such notice should be given at directors' meeting or interested director shall take reasonable steps to ensure notice is read by other directors.

Such notice shall expire at end of financial year in which it is given, and a fresh notice for next year may be given in the last month of current financial year.

Study Tip – Prohibited Transactions, and Interest of other officers

1. A company cannot approve a transaction which is prohibited by Companies Act.
2. If any other officer of the company is interested in a proposed contract, he is required to disclose his interest in the transaction, and obtain the prior approval of the directors to enter into contract.

PRACTICE QUESTIONS

Q.9

What is the procedure for filing a general notice of interest by a director and what would such a general notice include?

(ICAP Book: Chapter 10 – Practice Question # 06)

Q.10

Briefly explain the exceptions to the following provisions as specified under the Companies Act, 2017.
In a meeting of board of directors, no director shall take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void.

(ICAP, CAF 07 Level – Autumn 2011, Q. 3e)

Q.11

Faraz Limited (FL) is considering to enter into a contract with Bari Limited (BL) for the construction of its new manufacturing facility. The Board of Directors of FL has authorized Hasan Ali, an executive director, to negotiate the final price with BL. Sara Ali, who is a chief executive in BL, is the spouse of Hasan Ali.
In view of the provisions of the Companies Act, 2017 briefly explain the responsibilities of Hasan Ali towards FL under the above circumstances.

(05)
(ICAP, CAF 07 Level – Autumn 2019, Q. 8b)
(ICAP Book: Chapter 10 – Practice Question # 08)

LO 5: RELATED PARTIES, AND TRANSACTIONS:

Requirements regarding Related Party Transactions:

1. All transactions with related parties shall be made in accordance with policy approved by board, except for transactions which are in in ordinary course of business and on arm's length basis.
2. Commission may specify records to be maintained for transactions with related parties.
3. All related party transactions shall be included in directors' report to shareholders alongwith justification.

Definition of Related Party:

Related Party includes:

1. A Director or Key Manager (e.g. CEO/CFO) or his relative*.
2. A firm in which director/key manager/his relative is a partner.
3. A company in which director/key manager is a director **or** he/his relative is a member.
4. A holding, subsidiary or associated company.
5. Any company whose chief executives acts on instructions of director or key manager.
6. Any person on whose instructions, director or key manager acts (except advice given in professional capacity).

**Relative means spouse, siblings and lineal ascendants and descendants of a person.*

Types of Related Party Transactions:

- Sale or purchase of goods or services.
- Sale, purchase or lease of property of any kind.
- Appointment as agent for sale or purchases of goods or services.
- Appointment to an **office of profit*** in company or its associated company.

***Office of Profit:**

- In relation to a director, it means office/position for which director receives remuneration in addition to as director (e.g. salary, fee, commission, perquisites, any rent-free accommodation, or otherwise)
- In relation to other individuals, firms or companies, it means office/position for which it receives remuneration of any kind.

Status of Contract with Related parties without Approval:

If a related party contract is made without approval from board or general meeting, and it is not ratified by board/general meeting within **90 days** of contract:

- such agreement/transaction shall be **voidable at the option of Board**, and
- concerned director (who authorized or who was related party) shall **"indemnify"** company against any loss.

"Penalty" for a director/employee who entered into or authorised related party transaction in violation of these requirements:

- in case of **listed company**, imprisonment upto **3 years** or fine of alteast **5 million** rupees or both.
- in case of any other company, penalty of level 2.

PRACTICE QUESTIONS

Q. 12
XYZ Limited is considering an arrangement with ABC firm in which Azam, Babar and Chand are partners. Azam is spouse of Naheed, one of the directors in XYZ Limited. Identify related parties of XYZ Limited in this situation.

(ICAP Book: Chapter 10 – Example # 10)

Q. 13
KLM Limited often obtains investment consultancy from Adeel. Adeel practices as business advisor and provides the consultancy to KLM Limited purely in professional capacity. Is Adeel a related party of KLM Limited?

(ICAP Book: Chapter 10 – Example # 11)

Q. 14
(a) Fareed is a non-executive director in Multan Pharma Limited (MPL), a listed company. He only receives meeting fee from MPL for attending board meetings and meetings of audit committee. Does Fareed hold office of profit in MPL?
(b) Naveed is a director in Multan Pharma Limited (MPL), a listed company. He receives only meeting fee from MPL for attending board meetings and meetings of risk management committee. Naveed also supervises the production on routine basis and lives in a rent free accommodation provided by MPL near its production site. Naveed does not receive any monthly or annual salary from MPL. Does Naveed hold office of profit in MPL?

(ICAP Book: Chapter 10 – Example # 12, 13)

Q. 15
Majeed is a director in Multan Electronics Limited (MEL), a listed company. His brother bought two air conditioners from main showroom of MEL at the same retail price as is offered to any other customer. Is approval of Board required for this related party transaction?

(ICAP Book: Chapter 10 – Example # 14)

APX 1: OBJECTIVE BASED QUESTIONS AND ANSWERS:

Select the most appropriate answer from the options available for each of the following Multiple Choice Questions. Each MCQ carries ONE mark. These questions are adapted from ICAP's Study Text.

1. Under the provisions of the Companies Act 2017, the power to make investments in a company rests with the
(a) CEO of the company
(b) Directors of the company
(c) Members of the company
(d) Chairman of the company

2. Investment in associated company cannot be made by the directors themselves. They will have to get its approval from
(a) Members in a class meeting through special resolution
(b) Members in a general meeting through ordinary resolution
(c) Members in a general meeting through special resolution
(d) Members in a BOD meeting through ordinary resolution

3. Being a separate legal person, a company can make investments in any other company or security. But all the investments of the company must be made and held .
(a) In the name of controlling shareholders
(b) In the name of Sponsors of the company
(c) In the name of chairman of the company
(d) In the name of Company itself

4. The company shall not make an increase in amount or any variation in the nature and terms of any investment in associated company, without passing
(a) An ordinary resolution in the general meeting.
(b) A special resolution in the general meeting
(c) A resolution in the Board meeting
(d) A resolution in creditors meeting

5. The register for investments of company not held in its own name is open to inspection for the members of the company
(a) Free of cost for at least two hours daily
(b) Free of cost for at least five hours daily
(c) At a payment of charge for at least two hours daily
(d) At a payment of charge for at least five hours daily

6. Any member may require a certified copy of register of investment held in company's name, on fee fixed by the company. Certified copies requested shall be issued
(a) After 7 days
(b) Within 7 days
(c) After 14 days
(d) Within 14 days

7. The term "investment" shall include
(a) Loans
(b) Advances
(c) Equity
(d) All of the above

Anas, Asadullah, Ameen and Arqam are founder partners of Fast Movers Forwarders (FMF). In January 2020, all partners had purchased shares of Quality Tiles Limited (QTL), a listed company. In June 2020, they contested the election of directors of QTL and got elected as directors out of seven positions. Being majority directors of QTL, they cancelled the contract of existing logistics service provider and awarded the contract to FMF.
Whether the aforesaid contract is valid?

(a) Yes, because it is approved by the majority of the directors and the board is fully empowered to manage the affairs of the company
(b) No, the contract need to be approved by majority of such directors who are not interested in the said contract
(c) No, the contract must be laid before the general meeting for approval
(d) No, the contract must be approved by the general meeting as well as by the Commission

Under which of the following situations a person may, as a director, take part in the discussion of any contract to be entered into on behalf of the company, even if he is in anyway concerned or interested in the contract?
If he is the director of a private company which is:
(a) subsidiary of a public company.
(b) holding company of a public company.
(c) associated undertaking of a public company.
(d) neither a subsidiary nor a holding company of a public company.

KLM Limited in considering a related party transaction in which majority of directors are interested. Which of the following is correct?
(a) If the transaction is in accordance with policy approved by the board of KLM Limited, it need not be approved in a general meeting.
(b) The matter must be placed before the general meeting for approval as special resolution.
(c) The matter must be placed before the general meeting for approval as ordinary resolution.
(d) Such transactions are absolutely prohibited under the Companies Act and all interested directors shall be liable to penalty in case such transaction is carried out whether with or without approval.

Answer Key to MCQs

1.	(b)	Directors of the company can make an investment or disinvestment decision.
2.	(c)	Directors will have to get its approval from members in a general meeting through a special resolution.
3.	(d)	All the investments of the company must be made and held in the name of the company itself and not in the name of any other person.
4.	(b)	The company cannot change or vary the terms of investments without passing a special resolution in the general meeting
5.	(a)	The register is open to inspection of the members free of cost for at least two hours daily
6.	(b)	Certified copies of register requested shall be issued within seven days
7.	(d)	The expression investment shall include loans, advances, equity, guarantees by whatever name called or any amount which is not in the nature of normal trade credit
8.	(c)	No, the contract must be laid before the general meeting for approval as majority of directors are interested in the contract.
9.	(d)	The restrictions do not apply to director of a private company which is neither a subsidiary nor a holding company of a public company
10.	(b)	The matter must be placed before the general meeting for approval as special resolution.

APX 2: SOLUTIONS TO PRACTICE QUESTIONS:

Q. 1

1. Relevant Legal Provision:
If a director of a company is also a director in another company, both companies become associated companies.

Decision and Basis of Decision:
ABC Limited and DEF Limited are associated companies, as Azam is director in both.

2. Relevant Legal Provision:
If a director of a company is also a partner in a firm, both undertakings become associated undertakings.

Decision and Basis of Decision:
ABC Limited and GHI Enterprises are associated undertakings, as Azam is director in one and partner in another. Further, DEF and GHI also become associated undertakings of each other.

Q. 2

Relevant Legal Provision:
If a director of a company is also a holder of 20% or more voting power in another company, both companies become associated companies.

Decision and Basis of Decision:
ABC Limited and JKL (Private) Limited become associated companies as Babar is director in ABC and holds more than 20% shares in JKL.

Q. 3

(a)

Relevant Legal Provision:
Companies become associated companies if they are under common control, or one is the subsidiary of another.

Decision and Basis of Decision:

- ABC Limited, and DEF Limited are associated companies of each other because of holding/subsidiary relation.
- ABC Limited, and KLM Limited are associated companies of each other because of holding/subsidiary relation.
- DEF Limited, and KLM Limited are associated companies of each other because they are under common control.

(b)

Relevant Legal Provision:
Shareholding by National Investment Trust is not considered in determining status of associated company.

Decision and Basis of Decision:
ABC Limited and XYZ Limited do not become associated companies because shares are held by National Investment Trust.

(c)

Relevant Legal Provision:
Independent director is not considered in determining status of associated company.

Decision and Basis of Decision:
ABC Limited and XYZ Limited do not become associated companies because Saima is an independent director.

Q. 4

(i)

Decision and Basis of Decision:
SSL and FPL are associated companies as both are under common control of IL.

(ii)
SSL must fulfill following conditions to make investment in FPL (its associated company):

1. Approval of members is obtained by passing **special resolution.**
2. Special resolution shall indicate nature, period, amount, and other terms and conditions of investment.

If investment is in the form of **loan or advances,** following **additional conditions** shall also be met:

3. Investment shall be made through a **written agreement.** This agreement shall include nature, purpose, period, rate of return, fee or commission, repayment schedule for principal and interest, security, and penalty clause in case of default.
4. Return on investment shall not be less than the **borrowing cost** of SSL (or such **higher** rate as may be specified by the Commission).
5. Return shall be **recovered on regular basis** in accordance with the terms of the agreement. Otherwise, directors shall be personally liable to make the payment.
6. Directors of SSL shall certify that the investment is made after **due diligence** of borrowing company, and that borrower has ability to repay the loan as per the agreement.

An increase in the amount, or change in the terms and conditions of investment shall be made only by a special resolution.

__Examiners' Comments – Useful Extracts:__
Poor performance was observed in this part of the question. Majority of the candidates though correctly identified the relationship between the two companies, failed to provide the reason for such identification. In response to sub-part (ii) of the question, majority of the answers produced were incomplete. Many candidates wrote that a company should not borrow at a rate which is less than its return on investment instead of the borrowing cost of the investing company.

Marking Plan:

▪ (i) Identification of the type of relationship between SSL and FPL	1.0 marks
▪ (ii) Describing the conditions which SSL must fulfil before making any investment in FPL	5.0 marks

Q.5
(i)
Relevant Legal Provision:
Directors have power to make investment in a company which is not an associated company.

Decision and Basis of Decision:
KL can make investment in LOL by passing a resolution in directors' meeting. Approval of member is not required in this case.

(ii)
Relevant Legal Provision:
A company can invest in its associated company but only by fulfilling specified conditions.

Decision and Basis of Decision:
As KL holds more than 20% shares in MPL, therefore MPL and KL both are associated companies. KL, being a public company, can invest in MPL only if following conditions are fulfilled:

1. Approval of members of KL is obtained by passing **special resolution.**
2. Special resolution shall indicate nature, period, amount, and other terms and conditions of investment.
3. Loan shall be made through a **written agreement.** This agreement shall include nature, purpose, period, rate of return, fee or commission, repayment schedule for principal and interest, security, and penalty clause in case of default.
4. Rate of return on loan shall not be less than **the borrowing cost** of KL (or such **higher** rate as may be specified by the Commission).
5. Return shall be **recovered on regular basis** in accordance with the terms of the agreement. Otherwise, directors shall be personally liable to make the payment.
6. Directors of investing company shall certify that the investment is made after **due diligence** of borrowing company, and that borrower has ability to repay the loan as per the agreement.

Examiners' Comments – Useful Extracts:
Majority of the answers were incomplete and were confined to the statement that KL can make investment in MPL by passing a Special Resolution (without stating what that resolution would approve) and that the rate of return on such investment shall not be less than KL's borrowing cost.

Marking Plan:

Specifying the conditions which KL must comply before making investment in:	
▪ an associated company	6.0 marks
▪ a company which is not an associate	1.0 marks

Passing Percentage:
25%

Q. 6

Decision and Basis of Decision:
Yes, because, shares are registered in the name of CDC as a trustee only. Beneficial ownership remains with actual owner of shares.

Q. 7

(a) ABC Limited is allowed to hold some of its investment in XYZ Limited in the name of two other persons (rather than in its own name).
(b) ABC Limited is allowed to transfer 10,000 shares in XYZ Limited either jointly in its own name and in the name of Mr. Afzal, or in the name of Mr. Afzal alone.

Q. 8

(i)
Relevant Legal Provision:
A holding company may hold its shares in a subsidiary company in the name of a nominee person to ensure that number of members of the subsidiary company is not reduced below the statutory limit.

Decision and Basis of Decision:
PTPL (being a private company) must have atleast 2 members. Therefore, OTL can hold his shareholding in the name of its nominee Rahim to meet requirement.

(ii)
Relevant Legal Provision:
If a company appoints or elects a nominated director in another company, such company may register or hold shares in other company in the name of nominee alone or jointly with nominee, but only upto the value of qualification shares required to be held by a director.

Decision and Basis of Decision:
OTL has nominated Sami as a director in TTPL. Therefore, OTL can hold his shareholding in the name of Sami upto the value of qualification shares.

Examiners' Comments – Useful Extracts:
– Many examinees did not mention that if a company is a wholly owned subsidiary means it has one shareholder, whereas the law requires that a private company must have at least two members; hence it is imperative to hold shares in the name of a nominee.
– Many examinees did not specify that qualification shares could be held jointly in the name of the investor company and its non-executive director or alone in the name of nominee.

Marking Plan:

Explaining the reasons for holding investment in the name of:	
▪ (i) an employee in case of wholly owned subsidiary	2.0 marks
▪ (ii) a non-executive director	2.0 marks

Passing Percentage:
41%

Q. 9

Such notice should be given at directors' meeting or interested director shall take reasonable steps to ensure notice is read by other directors.

Notice shall state that "he is a member/director/partner in another business and he should be treated as interested in every contract/arrangement made with that business".

Q. 10

Such prohibitions do not apply:

- on directors of a private company (neither a subsidiary nor a holding of public company), and
- on contract of indemnity against loss suffered by director as surety of company, provided transaction (because of which liability arose) was validly approved by the board or members of the company.

Examiners' Comments:
A director is restricted from taking part in discussion on a contract/arrangement in which he is interested. Very few students could narrate the exemptions as are provided in Companies Act, 2017.

Q. 11

Hassan Ali is deemed to be indirectly interested in the transaction as his wife is the chief executive in BL.

Hassan Ali should give a general notice of his interest to all other directors that he be considered as interested in the all transactions entered into with BL. This notice shall be given at board meeting at which matter is first to be discussed.

After disclosing his interest in the transaction, Hassan Ali should not participate in discussion on the proposed contract.

Examiners' Comments:
Many examinees, though identified Hasan Ali's interest in the contract, failed to discuss that Hasan Ali was required to give the notice of his interest to the directors at their meeting where the question of entering into the contract was first to be taken into consideration.

Marking Plan:

▪ Briefly discussing the responsibilities of Hasan Ali regarding the disclosure of his interest in the contract	5.0 marks

Passing Percentage:
25%

Q. 12

In relation to XYZ Limited:

- Naheed is related party being a director,
- Azam is a related party being relative of a director and
- ABC firm is related party being a firm in which relative of a director is a partner.

Q. 13

Adeel is not a related party in relation to KLM Limited as advice is given in a professional capacity.

Q. 14

(a) Fareed does not hold office of profit in MPL.
(b) Naveed holds office of profit in MPL.

Q. 15

The transaction entered into by MEL is in its ordinary course of business and on an arm's length basis, therefore, requirements of approval are not applicable.

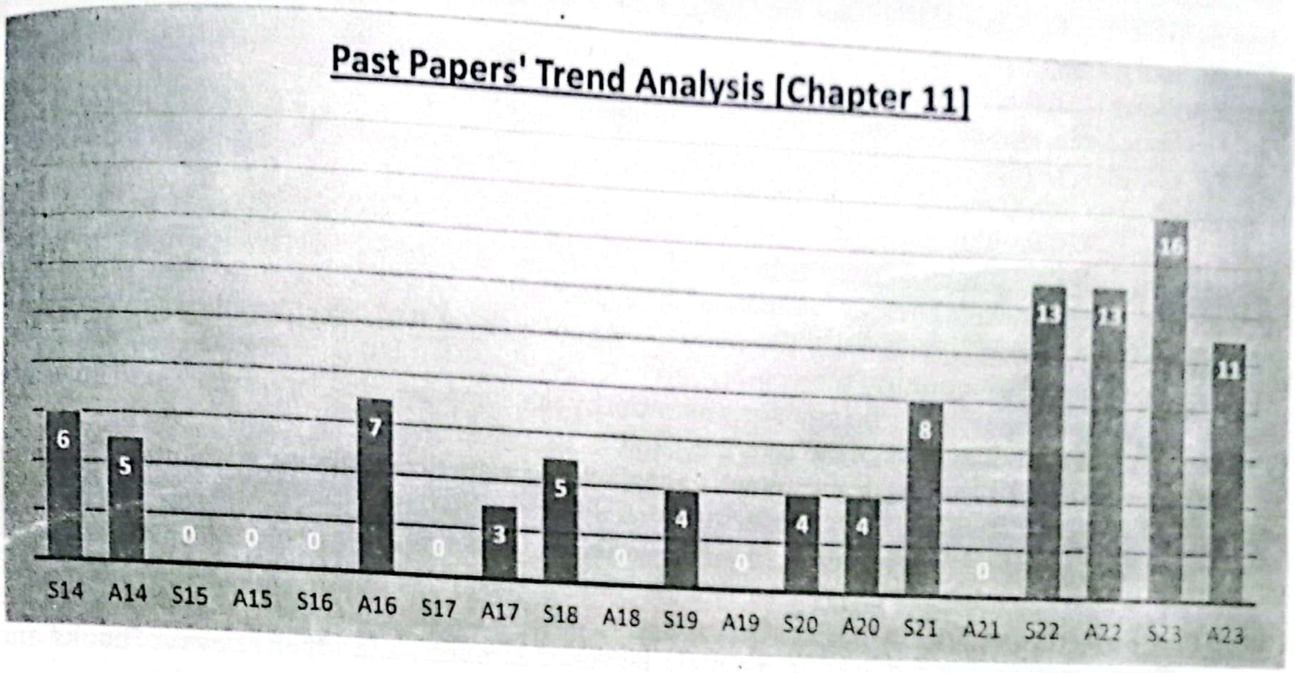
CHAPTER 11

ACCOUNTS AND ANNUAL RETURN

LO #	LEARNING OBJECTIVE	ICAP Book Reference	
LO 1	BOOKS OF ACCOUNTS	11	Section 1
LO 2	ANNUAL FINANCIAL STATEMENTS	11	Section 2
LO 3	QUARTERLY FINANCIAL STATEMENTS OF LISTED COMPANIES	11	Section 2
LO 4	GROUP FINANCIAL STATEMENTS	11	Section 3
LO 5	DIRECTORS' REPORT AND STATEMENT OF COMPLIANCE	11	Section 4
LO 6	ANNUAL RETURN	11	Section 5

APPENDIX

APX 1	OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT)
APX 2	SOLUTIONS TO PRACTICE QUESTIONS



Overview of the Chapter:

- This chapter discusses different types of Books, Accounts, Reports and Returns to be prepared by a company.

Examinability of the Chapter: ***(considering latest syllabus and testing by ICAP)***

Although, examiner may ask question from any topic in any way. However, based on my past experience:

- Normally, a question of reproduction is asked from this chapter. Sometimes, a case study is also tested.
- 8 – 10 marks' question is expected from this chapter in exam.

In-depth analysis of examinability with particular reference to ***Spring 2024 attempt*** *will be explained in class.*

LO 1: BOOKS OF ACCOUNTS:

Books and paper:

Book and paper includes:

- books of accounts (including cost accounting records),
- minutes, registers, vouchers, documents

, maintained on paper or in electronic form.

What is included in Books of Accounts:

Books of account include records maintained in respect of:

(a) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure took place,
(b) all sales and purchases of goods and services by the company,
(c) all assets and liabilities of the company, and
(d) items of cost accounts, if company is engaged in production, processing, manufacturing or mining activities.

These books of accounts may be kept in hard or electronic form.

Who is required to maintain books of accounts:

- Every company is required to maintain books of accounts, and other relevant "books and papers" including those of its branch offices.
- A liquidator of company is also required to maintain books of accounts during winding up of the company.

Period of Retention:

Books of accounts (alongwith vouchers relevant to entries in such books) must be retained in good order for at least **10** immediately preceding financial years.

Place of keeping the books of accounts:

Books of accounts are kept at **Registered office** of the company.

However, all or some of books may be kept at any other place in Pakistan (i.e. other than Registered Office) if:

- directors pass a resolution in their meeting, and
- Registrar is notified in writing within **7 days** of the resolution, giving the full address of that other place.

Record of Branch Offices:

If a company has **branch offices** (whether in or outside Pakistan), books of accounts with respect to branch may be maintained at branch provided summarized returns are periodically sent by branch office to registered office where books of accounts are kept (or any other place for this purpose).

Inspection of books of accounts:

☐ **Inspection by Members:**
Members cannot inspect books of accounts. However, Companies Act or General Meeting, or Directors may authorize members to inspect books of accounts.

☐ **Inspection by Directors:**
Directors can inspect books of accounts during business hours. If any financial information is maintained outside the country, copies of such financial information shall be produced for inspection by any director. Officers and other employees shall give full assistance to director making such inspection.

PRACTICE QUESTIONS

Q. 1

Extravagant Hotels Limited (EHL) was incorporated in the year 2000. EHL's financial year ends on 30 June. EHL has kept its books of accounts in professional, systematic and organized manner since incorporation. On 15 March 2022, due to shortage of space, the board of directors has approved that the books of accounts should only be kept up to the period prescribed by the Companies Act, 2017. Upto which year, EHL can dispose off its books of accounts?

(ICAP Book: Chapter 11 - Example # 01)

Q. 2

SQL Plastics Limited is a wholly owned subsidiary of a foreign company and has its registered office in Karachi.

(a) List the books of account the company is required to maintain. **(04)**

(b) State the conditions which the directors shall be required to comply with if they want to keep the books of account at SQL's factory located in Peshawar. **(02)**

(ICAP, CAF 07 Level - Spring 2012, Q. 7)
(ICAP Book: Chapter 11- Practice Question # 01)

LO 2: ANNUAL FINANCIAL STATEMENTS:

Financial Statements:

Financial statements of a company include:

1. Statement of financial position as at year end.
2. Statement of profit or loss, and other comprehensive income (or an income and expenditure statement for not-for-profit organizations) for the period.
3. Statement of changes in equity for the period.
4. Statement of cash flows for the period.
5. Notes, comprising a summary of significant accounting policies and other explanatory information.
6. Comparative information of previous period.
7. Any other statement as may be prescribed.

Financial Year:

Financial year means the period for which financial statements of the company are prepared to present in AGM, whether that period is a year or not.

Period covered by Financial Statements:

- **First Financial Statements** shall cover a period from date of incorporation till the close of the financial year.
- **Subsequent Financial Statements** shall cover a period since preceding financial statements till the close of the financial year adopted by the company. If period of subsequent financial statements exceeds one year, special permission from Registrar is required.

When to present Financial Statements:

- **First Financial Statements** shall be presented in AGM within **16 months** from the date of incorporation.
- **Subsequent Financial Statements** shall be presented in AGM once in each calendar year, within **120 days** from close of financial year.

*Extension upto **30 days** may be granted in period by Commission (for listed company) or Registrar (for other companies).*

Approval and Authentication of Financial Statements: *(Quarterly, Half-yearly, Annual, Consolidated)*
Financial Statements shall be approved by Board of Directors.

On behalf of board, financial statements shall be signed by:

- Chief Executive, and
- Atleast **01** Director, and
- Chief Financial Officer (in case of listed company).

If chief executive is not available in Pakistan, then the financial statements shall be signed by at least **02** directors.

Financial statements of a single member company shall be signed by one director.

> **Chief Financial Officer (CFO)**
> CFO means an individual appointed to perform such functions and duties as are normally performed by a CFO.

Audit of Financial Statements:
Financial statements of every company shall be audited, **except:**

- ☐ a private company with paid-up capital upto 1 million. Such private company shall only submit unaudited financial statements alongwith an affidavit (signed by Chief Executive or any of directors if chief executive is not in Pakistan) that these have been approved by the board.

Dispatch to members:
Every company shall send to its members (either by post or electronically):

- copy of financial statements, auditor's report, directors' report and Chairman's Review report (in case of listed company),
- atleast **21 days** before the date of general meeting (alongwith notice of meeting)

Filing of Financial Statements to Regulatory Authorities:
Filing before AGM: *(for listed company only)*
Simultaneously with despatch to members, a listed company shall send by post **03** copies, and electronically **01** copy of financial statements ***(alongwith auditor's report, directors' report and chairman's review report)*** to SECP, Registrar and Stock Exchange.

Listed company shall also upload financial statements ***(alongwith reports)*** on company's website.

Filing to Registrar after AGM: ***(For all companies except a private company with paid up capital 10 million or less)***
After AGM, every company shall file a copy of "audited financial statements" ***(alongwith auditor's report, directors' report and chairman's review report if applicable)*** to Registrar within **30 days** (for listed company), or **15 days** (for unlisted company).

If members do not adopt financial statements:
If financial statements are not adopted at AGM or AGM is adjourned, financial statements shall still be filed with Registrar, and this **fact** alongwith **reason** shall be annexed to the financial statements.

Copy at Registered Office:
Company shall keep a copy of financial statements and audit report at registered office of the company, for inspection by members.

PRACTICE QUESTIONS

Q.3

The board of Relax Furniture Limited (RFL) a listed company, couldn't lay before the company in annual general meeting its annual financial statements for the year ended 30th June 2019 that was required to be laid on or before 28th October 2019.

(a) What should RFL do to avoid any penalty under Companies Act 2017.

(b) RFL also wants to get extension in filing its quarterly financial statements for the period ending 30 September 2019. Can it do so?.

(ICAP Book: Chapter 11 - Example # 03)

Q.4

The chief executive of Raza Enterprises Limited (REL), a listed company, is out of the country at the time of finalization of annual accounts. Explain the provisions related to signing and authentication of the annual accounts as contained in the Companies Act, 2017 which REL would have to comply with, in the above situation.

(03)

(ICAP, CAF 07 Level - Spring 2010, Q. 9b)

(ICAP Book: Chapter 11- Practice Question # 03)

Q.5

Under the provision of the Companies Act, 2017 briefly describe the requirements of a private limited company for presenting its first financial statements in the annual general meeting and whether the financial statements are required to be audited.

(05)

(ICAP, CAF 07 Level - Spring 2018, Q. 9a)

(ICAP Book: Chapter 11- Practice Question # 02)

Q.6

The annual general meeting of a company was held on October 31, 2009 but on account of certain disagreements, the members did not adopt the audited financial statements for the year ended June 30, 2009. In the above situation how would the company comply with the provisions of the Companies Act, 2017 related to the filing of copies of annual accounts with the registrar of companies?

(04)

(ICAP, CAF 07 Level - Spring 2010, Q. 7a)

(ICAP Book: Chapter 11- Practice Question # 04)

LO 3: QUARTERLY FINANCIAL STATEMENTS OF LISTED COMPANIES:

Requirements for Preparation of Quarterly Financial Statements:

Every **listed** company is required to prepare quarterly financial statements:

- Within **30 days** of close of first quarter, and third quarter.
- Within **60 days** of close of second quarter.

Additional Requirements for financial statements of Second Quarter:

1. Cumulative figures for **06 months** shall be presented.
2. A limited scope review shall be conducted by statutory auditor of the company for these financial statements. Terms and conditions of such review shall be:
   - Determined by ICAP, and
   - Approved by Commission.

Exam Tip – Extension for Quarterly Financial Statements

On application by company, extension of a period upto 30 days may be allowed by Commission for first quarterly financial statements, if company was allowed extension in filing previous annual financial statements.

Upload and Dispatch to members:

For information of members, Quarterly financial statements shall be:

1. uploaded on company's website for a period specified by Commission.
2. despatched in physical form to a member without fee (if requested by any member)

Filing to authorities:
Quarterly financial statements shall also be transmitted electronically to Commission, Registrar, Stock/Securities Exchange.

PRACTICE QUESTIONS

Q. 7
Adeel Limited is a listed company with financial year from 1 July to 30 June. It shall prepare financial statements for the year 2019 – 2020.
State how many times it is required to prepare its financial statements. Also state period for which financial statements will be prepared and time limit within which it should prepare each set of financial statements.

(ICAP Book: Chapter 11 – Example # 02)

LO 4: GROUP FINANCIAL STATEMENTS:

Requirement to prepare "Consolidated Financial Statements":
If a **Holding Company** has one or more subsidiaries, Consolidated Financial Statement for the group shall also be attached with its financial statements.

Exception: A private company and its subsidiaries (if paid-up capital of each company is upto 1 million) are NOT required to prepare consolidated financial statements.

Financial Year of Holding and Subsidiary:
Directors of holding company shall ensure that financial years of holding and subsidiaries coincide, except when there is valid reason in their opinion.

If financial years do not coincide:
If financial years do not coincide, Commission may extend financial year of holding or subsidiary company on application of such company. Commission may also grant other related relaxation e.g. in conduct of AGM, and in filing financial statements and returns.

If there is Gap of more than 90 days:
If financial year of subsidiary ends **more than 90 days** before financial year of holding ends, Subsidiary company shall make interim closing on year-end of holding company and shall prepare financial statements for consolidation purposes.

Audit of Consolidated Financial Statements:
Auditor of holding company shall also audit consolidated financial statements.

Disclosure Requirements:
Consolidated Financial Statements shall comply with disclosure requirements of financial reporting standards and relevant Schedule.
If an information or explanation on qualification (related to a subsidiary) is not included in financial statements of holding company but is material for members of holding company, it shall be included in consolidated financial statements.

Penalty:
Penalty of Level 2 will be imposed in case of violation of above requirements.

PRACTICE QUESTIONS

Q.8
On January 1, 2020 River Pakistan Limited (RPL) became the holding company of Green Pakistan Limited (GPL) by acquiring 51% shares. The financial year-end of RPL is 30th June and that of GPL is 31st December.
How the requirement of preparation of consolidated financial statements shall be fulfilled, considering the fact that both companies have different year end?

(ICAP Book: Chapter 11 – Example # 04)

Q.9
On October 1, 2021 Food Festival Limited (FFL) became the holding company of Oregano Limited (OL) by acquiring 60% shares. The financial year-end of FFL is 31st December and that of OL is 31st October.
How the requirement of preparation of consolidated financial statements shall be fulfilled, considering the fact that both companies have different year end?

(ICAP Book: Chapter 11 – Example # 05, 06)

LO 5: DIRECTORS' REPORT AND STATEMENT OF COMPLIANCE:

Which companies are required to prepare Directors' Report:

Following companies are required to prepare Directors' report for each financial year and send to members:

1. Public Company.
2. Private Company which is subsidiary of public company
3. Private company with paid up capital of more than 3 million.

Contents of Directors' Report:

Directors shall attach with financial statements, a directors' report containing following particulars:

Contents of directors' report for Every Company:

1. Statement regarding the state of the affairs of company, and a fair review of its business.
2. Particulars of amount recommended as dividend (if any).
3. Particulars of amount transferred (or proposed to be transferred) to reserve account (if any).

Additional contents in case of public company (or private company which is subsidiary of public company):

1. Names of the persons who were directors anytime during financial year.
2. Principal activities, performance and development of business.
3. Material changes occurred during the financial year which affect the business of company, its holding company, its subsidiaries, and other companies in which it has made investment.
4. Subsequent events affecting financial position (e.g. entering into a joint venture with foreign company, or imposition of certain additional tax by government).
5. Explanation if auditor has expressed modified opinion or any other observation in his report.
6. Pattern of shareholding (in the form specified).
7. Name of holding company and country of incorporation (if holding company is incorporated outside Pakistan)
8. Earnings per share, Reasons for incurring loss and a reasonable indication of future prospects of profit.
9. Information about defaults in payment of debts, if any
10. A description of the principal risks and uncertainties faced by the company
11. Comments in respect of adequacy of internal controls.
12. Remuneration package of each director and chief executive.
13. Any other information as may be specified.

In case of **listed company**, **business review section** must include following for understanding the development, performance or position of company's business:
(a) main **trends and factors** likely to affect the future performance and position of company's business;
(b) impact of the company's business on the **environment**;
(c) activities during the year relating to **corporate social responsibility**; and
(d) directors' responsibility in respect of adequacy of **internal financial controls**.
(e) Justification for not declaring **dividend** despite profits, and future prospects of dividend.

Statement of Compliance:
Commission may direct directors of companies to prepare statement of compliance (as may be specified), and attach with financial statements.

Authentication of "Directors' Report" and "Statement of Compliance":
The directors' report and Statement of Compliance must be:
- approved by the board, and
- signed by the chief executive and a director of the company.

PRACTICE QUESTIONS

Q. 10
Under the provisions of Companies Act, 2017 it is the responsibility of the board to prepare directors' report for each financial year. The Act has further prescribed the minimum contents of such report.
In the above context, list the matters which are required to be included in the business review section of the directors' report of a listed company. (04)

(ICAP, CAF 07 Level – Spring 2019, Q. 10b)
(ICAP Book: Chapter 11– Practice Question # 11)

Q. 11
The annual general meeting of Iqra Industries Limited (IQL) a listed company, is to be held on October 25, 2008. In addition to the normal businesses, the company is planning to discuss a strategic business plan for the approval of the shareholders.
Explain the requirements of Companies Act, 2017 as regards the circulation of information/documents to various stake holders, prior to the above meeting. (11)

(ICAP, CAF 07 Level – Autumn 2008, Q. 1)
(ICAP Book: Chapter 11– Practice Question # 12)

LO 6: ANNUAL RETURN:

What is included in Annual Return:
Annual return includes general information about company at a specific date e.g. about CEO, Directors, CFO, Company Secretary, Legal Advisor, Auditor, Registered Office Address, Members, Share capital.

Requirement to file Annual Return:
Every company shall file Annual Return with **Registrar** in following specified forms:
- Form A (for company having share capital)
- Form B (for company not having share capital)

Particulars reported in Form A or B are required to be previously recorded in Registers maintained by company.

Exception:
A company is **not required** to file Annual Return in Form A or Form B **if there is no change** in particulars filed in last Return. However, such company (except SMC, or Private company with paid up capital upto Rs. 3 million) shall inform Registrar in prescribed manner **(Form C)** that there is no change of particulars.

Date of Annual Return:

Annual Return includes particulars as on:

- date of AGM, or
- last day of calendar year, if no AGM is held or AGM is not concluded.

Annual return shall be filed with Registrar within **30 days** from the date of Annual Return. Registrar may extend this period **upto 15 days**, in case of listed company.

Penalty:

- Penalty of Level 2 for violation by listed company.
- Penalty of Level 1 for violation by any other company.

PRACTICE QUESTIONS

Q. 12

ABC Limited recent financial year ended on 30th June 2021 and AGM was held on 24th October 2021. When should particulars of Annual Return be prepared, and when should be Annual Return filed?

(ICAP Book: Chapter 11 – Example # 10, 12)

Q. 13

DEF Limited recent financial year ended on 30th June 2021 and AGM was not held (which is contravention of Companies Act, 2017). When should particulars of Annual Return be prepared, and when should be Annual Return filed?

(ICAP Book: Chapter 11 – Example # 11, 13)

Q. 14

ABC Limited recent financial year ended on 30th June 2022 and AGM was held on 24th October 2022. There is no change since in any particulars of annual return since the last date of annual return. Is ABC Limited required to file any return?

(ICAP Book: Chapter 11 – Example # 14)

APX 1: OBJECTIVE BASED QUESTIONS AND ANSWERS:

Select the most appropriate answer from the options available for each of the following Multiple Choice Questions. Each MCQ carries ONE mark. These questions are adapted from ICAP's Study Text.

1. Books of accounts must be preserved in good order under the requirement of Companies Act, 2017 for a period of
(a) At least 10 years
(b) At least 15 years
(c) Maximum 20 years
(d) Maximum 10 years

2. Books of accounts must be kept at the registered office of the company, however, these books may be kept at some other place by the decision of:
(a) The members of the company
(b) The directors of the company
(c) The creditors of the company
(d) The Auditors of the company

3. The books of accounts may be inspected by the
(a) Directors of the company during business hours
(b) Members of the company during business hours
(c) Creditors of the company during business hours
(d) Promotors of the company during business hours

4. In case of first financial statements of the company, it shall be presented before the meeting within
(a) 12 months from the date of incorporation of the company
(b) 14 months from the date of incorporation of the company
(c) 16 months from the date of incorporation of the company
(d) 24 months from the date of incorporation of the company

5. As a token of approval of financial statements, the chief executive and at least one director of the company put their signatures on the financial statements and in case of a listed company also by thé
(a) Company secretary
(b) Auditors of the company
(c) Chief financial officer
(d) Chief operating officer

6. The financial statements of a single member company shall be signed by
(a) Chief executive
(b) One director
(c) Chief executive and one director
(d) Chief executive and two director

7. The requirement of filing of accounts shall not apply to a private company having paid up capital not exceeding
(a) Rs. 10 million or such higher amount as notified by the Commission
(b) Rs. 05 million or such higher amount as notified by the Commission
(c) Rs. 03 million or such higher amount as notified by the Commission
(d) Rs. 01 million or such higher amount as notified by the Commission

8. Financial statements shall be audited by the auditor of the company but this requirement of audit is not applicable to a private company having paid up capital not exceeding
(a) Rs. 01 million or such higher amount as may be notified by the Commission
(b) Rs. 05 million or such higher amount as may be notified by the Commission
(c) Rs. 10 million or such higher amount as may be notified by the Commission
(d) Rs. 15 million or such higher amount as may be notified by the Commission

Directors of every company shall make out and attach to the accounts, a report containing following particulars
(a) Statements regarding the state of the affairs of the company
(b) Particulars of any amount recommended as dividend
(c) Particulars of any amount transferred or proposed to be transferred to any reserve account
(d) All of the above

The requirement of preparing a director's report is not applicable to a private company, not being a subsidiary of public company, have the paid up capital not exceeding
(a) Rs. 1 million
(b) Rs. 03 million
(c) Rs. 05 million
(d) Rs. 10 million

The directors report of a public company shall address all the material changes occurred during the financial year which affect
(a) The business of the company
(b) Any other company in which the company has interest
(c) Any of its subsidiaries
(d) All of the above

Directors report and the statements of compliance must be approved by the board and signed by the
(a) CEO
(b) Director of the company
(c) CEO and CFO of the company
(d) CEO and a director of the company

The quarterly financial statements of a listed company shall be transmitted electronically within the specified period to
(a) The Commission
(b) The Securities exchange
(c) The Registrar
(d) All of the above

The directors of a company have decided to keep the books of account at a place other than the registered office of the company. In this case, they are required to file a notice to the registrar of the full address of that place within
(a) 14days of such decision.
(b) 21days of such decision.
(c) 30days of such decision.
(d) 7days of such decision.

Copy of audited financial statements, auditors' report and directors' report shall be sent to every member at his registered address at least
(a) 14 days before the meeting
(b) 21 days before the meeting
(c) 30 days before the meeting
(d) None of the above is correct

ABC Limited is a listed company and prepares its annual financial statements every year on 30th June. It is required to file the quarterly financial statements for the quarter ending 31st December 2021 by:
(a) 30 January 2022
(b) 31 January 2022
(c) 28 February 2022
(d) 1 March 2022

Where the financial year of a subsidiary precedes the day on which the holding company's financial year ends by more than ______, such subsidiary shall make an interim closing, on the day on which the holding company's financial year ends, and prepare financial statements for consolidation purposes.
(a) Three months
(b) Four months
(c) 90 days
(d) 120 days

18. ABC Limited is holding company of XYZ Limited and their financial years do not coincide. In order to request extension of financial year the application to the Commission may be made by:
(a) ABC Limited
(b) XYZ Limited
(c) Either ABC Limited or XYZ Limited
(d) Both ABC Limited and XYZ Limited, together

19. XYZ Limited financial year ended on 30th June 2019 and AGM was planned on 28th October 2019 but was not held. The particulars of annual return must be prepared as on ________ and it shall be filed with the registrar by________.
(a) 28 October 2019 & 29 January 2020
(b) 28 October 2019 & 27 November 2019
(c) 31 October 2019 & 29 November 2019
(d) 31 December 2019 & 29 January 2020

20. XYZ (Private) Limited has paid up capital of Rs. 2 million only. Which of the following is correct if there is no change in particulars of annual returns last filed with the registrar:
(a) It should file the annual return as usual repeating the same particulars.
(b) It should file the annual return as usual repeating the same particulars and additionally intimate the registrar that there is no change in the particulars.
(c) It need not file annual return or any other form.
(d) It need not file annual return but must inform the registrar that there is no change in particulars in specified manner (Form C)

Answer to MCQs:

1.	(a)	Books of accounts for a period of at least 10 years immediately preceding a financial year must be preserved in good order.
2.	(b)	The directors of the company may opt to keep these books at some place other than registered office of the company.
3.	(a)	The directors are entitled to inspect the books of the accounts during business hours.
4.	(c)	The first financial statements of the company shall be presented before the meeting within 16 months from the date of incorporation.
5.	(c)	In case of a listed company, the financial statements shall also be signed by the chief financial officer of the company.
6.	(b)	The financial statements of a single member company shall be signed by one director.
7.	(a)	The requirement of filing of accounts shall not apply to a private company having paid up capital not exceeding Rs. 10 million.
8.	(a)	The requirement of audit is not applicable to a private company having paid up capital not exceeding Rs. 1 million.
9.	(d)	Director shall make a report containing statements regarding the state of the affairs of the company, any amount recommended as dividend and any amount transferred to any reserve account.
10.	(b)	The requirement of preparing a directors report is not applicable a private company having the paid up capital not exceeding Rs. 3 million.
11.	(d)	The directors' report of a public company shall address all the material changes occurred during the financial year which affect the business of the company, any of its subsidiaries or any company in which the company has interest.
12.	(d)	Director's report and the statements of compliance must be approved by the board and signed by the chief executive officer and a director of the company.
13.	(d)	The quarterly financial statements shall be transmitted electronically within the specified period to the Commission, Securities exchanges and Registrar.
14.	(d)	The directors are required to file a notice to the registrar within 7 days of passing the resolution in their meeting.
15.	(b)	Copy of audited financial statements, auditors' report and directors' report shall be sent to every member at his registered address at least 21 days before the meeting.
16.	(d)	The time limit for second quarter is 60 days.
17.	(c)	90 days
18.	(c)	Either ABC Limited or XYZ Limited
19.	(d)	31 December 2019 & 30 January 2020
20.	(c)	It need not file annual return or any other form.

APX 2: SOLUTIONS TO PRACTICE QUESTIONS:

Q. 1

EHL can dispose of such books of accounts up to the financial year 2011.

Q. 2

(a)

Every company is required to maintain following books of accounts:

1. all sums of money received and expended by a company and matters in relation to which the receipts and expenditure took place,
2. all sales and purchases of goods and services by the company,
3. all assets and liabilities of the company, and
4. items of cost accounts if company is engaged in production, processing, manufacturing or mining activities.

(b) SQL can maintain its books of accounts at Peshawar (instead of its registered office at Karachi) if:

1. Directors of SQL pass a resolution in their meeting, and
2. Registrar is notified in writing within 7 days of the decision, giving the full address of factory located in Peshawar.

__Examiners' Comments – Useful Extracts:__

(a) This was an easy question but a significant number of students failed to perform well. Instead of mentioning the books of accounts that are required to be maintained under Companies Act, 2017, they mentioned register of members, directors, financial statements.

(b) Generally the question was well attempted. However, many students were confused whether the notice for keeping books at factory is to be sent to SECP or the Registrar. Some of them incorrectly mentioned that the factory management would need to send quarterly summaries to the registered office.

Q. 3

(a)

Relevant Legal Provision:

SECP can give extension to listed companies upto 30 days to file annual financial statements.

Decision and Basis of Decision:

RFL being a listed company should apply to SECP to get extension.

(b)

__Relevant Legal Provision:__

A company can also get extension in filing its quarterly financial statements if extension has been granted for annual financial statements.

__Decision and Basis of Decision:__

RFL has been given extension in filing its annual financial statements, therefore, it can also get extension in filing quarterly financial statements.

Q. 4

__Authentication:__

Financial Statements shall be authenticated/approved by Board of Directors.

__Signing:__

Financial statements shall be signed by:

1. atleast two directors (as chief executive is not in Pakistan).
2. chief financial officer (as REL is a listed company).

Q. 5

__Presenting Financial Statements:__

First Financial Statements shall be presented in AGM within 16 months from the date of incorporation. Extension upto 30 days may be granted in period by Registrar.

Audit of Financial Statements:
A private company with paid-up capital upto 1 million is NOT required to audit its financial statements. Financial statements of other companies shall be audited, and audit report shall be attached to it.

Examiners' Comments:
Most of the students failed to answer this question correctly due to lack of knowledge regarding placement of financial statements in the annual general meeting. Many students were also not aware of the fact that audit is not mandatory where the paid up capital of the company does not exceed Rupees one million, whereas some students mentioned Rupees three million instead of Rupees one million.

Marking Plan:

▪ Description of the requirements for a private limited company regarding presentation of its first financial statements in the annual general meeting ▪ Description of the requirements of audit of financial statements for a private limited company	3.0 marks 2.0 marks

Passing Percentage:
24%

Q.6
A company is required to file financial statements (along with auditor's report and directors' report) with register even if general meeting did not adopt the financial statements.

However, in such case, a statement of the fact that the financial statements have not been adopted giving reasons thereof shall be attached while filing the financial statements.

Q.7
Adeel Limited is a listed company. It is required to prepare its financial statements 4 times in a year as follows:

Sr. #	Period	Time Limit
1.	Quarterly financial statement for the period ending 30 September 2019	Within 30 days of period-end i.e. by 30th October.
2.	Quarterly & Half-yearly financial statements for the period ending 31 December 2019	Within 60 days of period-end i.e. by 29th February 2020 (if leap year).
3.	Quarterly financial statement for the period ending 31st March 2020	Within 30 days of period-end i.e. by 30th April 2020.
4.	Annual financial statements for the year ending 30th June 2020	Within 120 days of year-end i.e. by 28th October 2020.

Q.8
GPL shall be required to make an interim closing on 30th June 2020 to prepare financial statements from 1 July 2019 to 30 June 2020 for consolidation purposes. These financial statements shall be in addition to those prepared from 1 January to 31 December by GPL.
[note that here different in year-ends is more than 90 days]

Q.9
OL (or FFL) shall apply for extension of its financial year so that its financial year coincides with that of FFL (its holding company). The Commission may allow the extension. The Commission may also allow other relaxations e.g. holding of AGM and other filing requirements.
[note that here different in year-ends is not more than 90 days]

Q. 10

In case of listed company, business review must include following for understanding the development, performance or position of company's business:

(1) main trends and factors likely to affect the future performance and position of company's business.
(2) impact of the company's business on the environment.
(3) activities during the year relating to corporate social responsibility.
(4) directors' responsibility in respect of adequacy of internal financial controls.

Examiners' Comments – Useful Extracts:
Instead of mentioning the matters required to be included in the business review section of the directors' report, candidates listed all contents of a directors' report.

Marking Plan:

▪ 0.75 mark for identifying each matter required to be included in the business review section of the director's report of a listed company	3.0 marks
▪ Explaining the extent to which above matters are required to be included	1.0 marks

Passing Percentage:
26%

Q. 11

IQL shall sent notice of AGM 21 days before AGM to its members or their representatives/official liquidators, directors and auditor.

This notice shall include following information:

1. Date, Hour and Place of the meeting
2. Nature of each Business to be transacted (whether ordinary or special).
3. Draft of special resolution (if any).
4. Option to provide on demand, facility of video-link for attending the meeting (in case of listed company if members holding atleast 10% share capital reside in a city)
5. Members' right to appoint proxy, and rights of such proxy (i.e. right to attend, speak and vote at general meeting). A Proxy Form shall be annexed to the notice.
6. Number of directors to be elected, and names of retiring directors (if relevant).

As this is Annual General Meeting, following documents shall also be annexed to notice:

1. Financial statements,
2. Auditor's report and
3. Directors' report.

As company is planning to transact a special business (strategic business plan), following documents shall also be annexed to notice:

1. Statement describing all material facts relating to such business.
2. Nature of interest of directors whether directly or indirectly (if any).
3. If a document is to be approved by the general meeting, time and place where document can be inspected.

As IQL is a listed company, therefore notice shall also be sent to Commission, and shall be published in one Urdu and one English daily newspaper having nation-wide circulation.

Examiners' Comments – Useful Extracts:
A number of candidates restricted themselves to the circulation requirements in terms of notice only and cited members as the only stakeholders without referring to circulation requirements pertaining to other stakeholders such as:
- auditors of the company
- Securities & Exchange Commission
- Registrar
- Stock exchange
- representative of a number who has died, if the interest of such person is known to the company.
Similarly, documents other then notice and audited accounts, were given little attention. These included:
- proxy form
- copies of draft resolutions, which are proposed for consideration in the meeting
- directors' report

Q.12

The particulars of annual return shall be prepared as on 24th October 2021. The annual return must be filed with the registrar by 22nd November.

Q.13

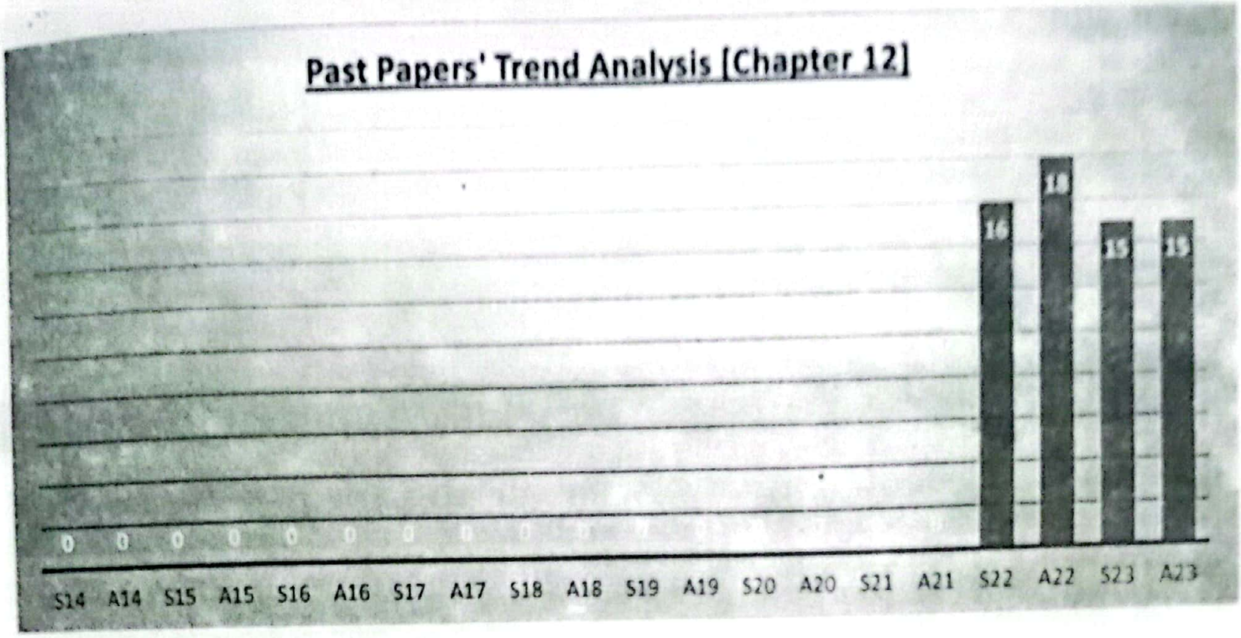
The particulars of annual return must be prepared as on 31st December 2021. Failure to file such annual return by 30th January 2022 shall be another contravention of the law.

Q.14

Annual Return is not required to be filed. However, ABC Limited must inform the registrar on Form C by 22nd November 2022 that there is no change of particulars in the last annual return filed with the registrar.

CHAPTER 12
INTRODUCTION TO WINDING UP

LO #	LEARNING OBJECTIVE	ICAP Book Reference	
		Chapter #	Paragraph #
LO 1	MODES OF WINDING UP OF A COMPANY	12	1.1
PART 1 – WINDING UP BY COURT			
LO 2	CIRCUMSTANCES FOR WINDING UP BY COURT	12	1.2, 1.3
LO 3	WHO CAN APPLY TO COURT FOR WINDING UP	12	1.4
LO 4	COMMENCEMENT OF WINDING UP	12	1.5
PART 2 – OFFICIAL LIQUIDATOR			
LO 5	APPOINTMENT OF OFFICIAL LIQUIDATOR	12	2.1
LO 6	STATEMENT OF AFFAIRS TO OFFICIAL LIQUIDATOR	12	2.2
LO 7	REPORT BY OFFICIAL LIQUIDATOR	12	2.3
PART 3 – OTHER MODES OF WINDING UP			
LO 8	OTHER MODES OF WINDING UP	12	1.6, 1.7, 1.8
LO 9	CONVERSION OF MODE OF WINDING UP	12	1.9
APPENDIX			
APX 1	OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT)		
APX 2	SOLUTIONS TO PRACTICE QUESTIONS		



Overview of the Chapter:

- This is the last chapter which is recently added in our syllabus (just two attempts ago). This chapter relates to winding up of a company.
- The chapter particularly focuses on winding up of a company by Court.

Examinability of the Chapter: ***(considering latest syllabus and testing by ICAP)***

Although, examiner may ask question from any topic in any way. However, based on my past experience:

- **Both types of questions may be asked from this chapter i.e. question of reproduction as well as case study.**
- **This is most important chapter of our syllabus from exam point of view, and has a separate grid. 15 – 20 marks' question will be tested from this chapter in exam.**

In-depth analysis of examinability with particular reference to Spring 2024 attempt will be explained in class.

LO 1: MODES OF WINDING UP OF A COMPANY:

There are three modes of winding up of a company i.e.

1. By Court, or
2. Voluntary (by members/creditors), or
3. Subject to supervision of court

A person appointed to carry out winding up of a company is called liquidator. If he is appointed by Court, he is called Official Liquidator.

PART 1 – WINDING UP BY COURT

LO 2: CIRCUMSTANCES FOR WINDING UP BY COURT:

Circumstances in which company may be wound up by Court.

1. If company has passed Special Resolution to windup company by court, or
2. If default is made in conducting Statutory Meeting or filing Statutory Report to Registrar, or
3. If default is made in conducting 2 consecutive AGM, or filing Financial Statements or Annual Return with Registrar for immediate preceding 2 consecutive years, or
4. If Number of members fall below minimum number (i.e. below 2 in case of private company, and below 3 in case of public company), or
5. If company is **unable to pay its debts**, or
6. If a listed company ceases to be a listed company, or suspends its business for whole year, or
7. If sole business of the company is licensed activity, and its license is revoked, or
8. If license of an Association Not For Profit is revoked, or voluntary winding up is not completed within 1 year from date of commencement of its winding up, or
9. Where the company carries on business which is
    a. **Unlawful or fraudulent**, or
    b. Prohibited, or restricted, or
    c. Oppressive to minority shareholders (i.e. shareholders having atleast 10% equity shares), or
10. Management:
    a. fails to maintain proper accounts, or commits fraud in relation to company.
    b. Refuses to act in according with Articles, Memorandum, Act, Registrar or Commission, or
11. If Court thinks it is just and equitable.

Company when deemed "Unable to pay debts":

1. If a creditor of more than **Rs. 100,000 serves a notice (himself or through authorized agent or legal adviser) at registered office of company, and within 30 days** company neither pays, nor satisfies creditor, or
2. If execution of an order of Court (or other authority) in favour of creditor remains unsatisfied, or
3. It is proved to court that company is unable to pay debt (Court shall also take into account contingent and prospective liabilities in determining this).

What is deemed to be "Unlawful Activity":

1. If company received deposits/contributions from public (in form of cash or through coupons/tickets etc.), and promises return at future date which is determined by chance or lottery etc.
2. If company raises Unauthorized deposits from general public through various schemes e.g. Referral Marketing, Multi-Level Marketing (MLM), Pyramid and Ponzi Schemes.
3. Any other business notified by Commission as against public policy or morally hazard.

Examples of Unlawful Activities

In a classic "pyramid" scheme, participants make money solely by recruiting new participants into the program. The hallmark of these schemes is the promise of sky-high returns in a short period of time for doing nothing other than handing over your money to the scheme and getting others to do the same. As soon as these pyramid schemes reach a certain size when there is no substantial inflow of new members the whole structure collapses. At this point the schemes get too big, and the promoters cannot raise enough money from new investors to pay earlier investors. For example, an MLM scheme offers membership on paying Rs. 1,000 and when a member brings in 5 more members, he gets Rs. 3,000 cash back. If each subsequent member brings 5 members and this goes on for just 15 levels, the total membership would be more than 30 billion (exceeding the world population).

(ICAP Book: Chapter 12 – Example # 03)

Many ongoing multilevel marketing schemes are also built-in pyramids selling products through a network of distributing salespeople. The pioneers of these schemes go to great lengths to make the program look like a marketing program for a group of products. They are neither manufacturer of any products nor dealers or distributors of any manufacturing concern. These businesses simply use the money coming in from new recruits to pay off early stage investors.

(ICAP Book: Chapter 12 – Example # 04)

CONCEPT REVIEW QUESTION

Q. 1

Two sole traders merged their businesses and got it registered as a company of which they were the only directors and shareholders. They quarrelled bitterly and one sued the other for fraud. Meanwhile they refused to speak to each other and conducted board meetings by passing notes through the hands of the secretary. The defendant in the fraud action petitioned for winding up by the Court. Can company be wound up in this case? If so, on which grounds?

(ICAP Book: Chapter 12 – Example # 01)

Q. 2

Ebrahimi and Nazar carried on business together for 25 years, originally as partners and for the last 10 years through a company in which each originally had 500 shares. Ebrahimi and Nazar were the first directors. Later, Nazar's son George joined the business and became a third director and Ebrahimi and Nazar each transferred 100 shares to George. Eventually there were disputes. Nazar and George tried to remove Ebrahimi from his directorship. Ebrahimi sought court's help in this situation. What could be appropriate action by court in this situation?

(ICAP Book: Chapter 12 – Example # 02)

Q. 3

For the last three months, ANF Limited (ANFL) has been experiencing liquidity crisis and is unable to meet its financial obligations within the due date. In the light of Companies Act, 2017 narrate the circumstances under which ANFL would be deemed to be unable to pay its debts.

(ICAP Book: Chapter 12 – Practice Question # 01)

LO 3: WHO CAN APPLY TO COURT FOR WINDING UP:

Who may give application/petition to Court for winding up by Court:

Who can give Application/Petition	Conditions for Petition
Company	Company has to file, in prescribed manner, **particulars of business** operations, assets, liabilities, and suits against it.
Creditors (including contingent or prospective)	Contingent or prospective creditors has to: ▪ **Establish** prima-facia **case** for winding up to the satisfaction of court. ▪ **Give security** for cost as Court thinks reasonable.
Contributories	▪ **If number of members reduced** below minimum numbers (i.e. 2 in case of private company, or 3 in case of public company), or ▪ **Shares have been allotted to him** for atleast **180 days** during last 18 months, or have been devolved on him through death of a member.
Registrar	▪ If he has obtained **sanction of SECP.** ▪ SECP has given to company **opportunity of representation** and being heard.
Commission (or its authorized person)	1. If Commission has **investigated**, and it is revealed that: ▪ Business of company is Unlawful or Fraudulent, or ▪ Business of company is not authorized by Memorandum, or ▪ Business is oppressive to any of its members or ▪ Management is guilty of fraud or misfeasance or misconduct towards company or its members. Investigation is not necessary if sole-business of company is Licensed activity, and license has been revoked. 2. Commission has given to company **opportunity of representation** and being heard.

Notes:

1. Application can by filed by all or any of above parties (together or separately).
2. "Contributory" means a person liable to contribute to the assets of the company in the event of its winding up.

CONCEPT REVIEW QUESTION

Q. 4

Under the provisions of the Companies Act, 2017 state who may file a petition for winding up in the Court.

(ICAP Book: Chapter 12 – Practice Question # 02)

LO 4: COMMENCEMENT OF WINDING UP:

Commencement of Winding up:

Winding up by Court commences at time of presentation of petition for winding up.

CONCEPT REVIEW QUESTION

Q. 5

A creditor filed petition for winding up of XYZ Limited to the Court on 24 February 2021. The Court appointed a provisional manager and continued with hearing of the petition. On 30th March 2021, the court ordered winding up of the company and appointed official liquidator. When is the commencement date of winding up?

(ICAP Book: Chapter 12 – Example # 05)

PART 2 – OFFICIAL LIQUIDATOR

LO 5: APPOINTMENT OF OFFICIAL LIQUIDATOR:

Appointment of Provisional Manager or Official Liquidator:

On receipt of a petition for winding up, Court may appoint either:

- a Provisional Manager to control affairs of company till winding up order is made, or
- an Official Liquidator, if winding up order is made.

Provisional Manager has same powers as held by Official Liquidator, unless limited by Court. Court may also appoint Provisional Manager as Official Liquidator subsequently.

Panel of Provisional Managers/Official Liquidators:

Commission maintains a panel of persons which consists of:

- persons having atleast **10 years'** experience in accounting, finance or law and
- such other persons specified by Commission having atleast **10 years'** professional experience.

Commission may remove the name of a person from panel in case of breach of duties, incompetence, fraud or misconduct, after giving him opportunity of being heard.

Eligibility for Provisional Manager/Official Liquidator:

Court shall appoint one or more Official Liquidator or Provisional Manager from panel maintained by Commission. A person can be appointed as Provisional Manager or Official Liquidator for maximum **03** companies at a time.

Exception: A person other than from panel can also be appointed on application of creditor whom 60% of **issued** share capital or more amount is due, after notice to Registrar.

Requirements for Official Liquidator on Appointment:

1. Court shall determine whether any security is to be given by liquidator on his appointment.
2. Official Liquidator shall file a **declaration** within **07 days** disclosing whether he has any **"conflict of interest"** or **"lack of independence"**. This requirement applies throughout the appointment.
3. **Official Liquidator shall follow the code of conduct, or other requirements as specified by Commission.**

If more than one liquidators are appointed:

- Court shall declare whether acts will be done by any one or more or all of them.
- Any dispute among liquidators shall be referred to Court.

Casual Vacancy:

- An Official Liquidator shall **not resign** before conclusion of liquidation, **except on personal disability** to the satisfaction of Court. If so resigned, he will **continue to act until** his **successor is appointed** (unless Court direct otherwise).
- Any **Casual Vacancy** (in case of death, disqualification, removal or resignation) shall be **filled by Court.**

CONCEPT REVIEW QUESTION

Q.6
Yasir was appointed provisional manager till the winding up order or otherwise of XYZ Limited is decided by the Court. The Court did not mention any restrictions or limitations on his power in the order. What are the powers of Yasir?
(ICAP Book: Chapter 12 – Example # 07)

Q.7
The creditors of XYZ Limited filed a petition for winding up. They requested Zameer to be appointed as official liquidator but his name is not on the panel of provisional managers and liquidators maintained by the Commission. Can a person be appointed as Official Liquidator if his name is not included in panel of Commission?
(ICAP Book: Chapter 12 – Example # 08)

Q.8
Zahid was appointed as Official Liquidator for the purpose of winding-up of Multi Sources Limited (MSL). Zahid wants to resign as the liquidator, because of the difficulties being faced by him in the performance of his responsibilities. He has discussed the matter with some of the directors who have assured him that his request would be considered in their meeting to be held soon. Comment on the issue in the light of the provisions of Companies Act, 2017.
(ICAP Book: Chapter 12 – Practice Question # 09)

LO 6: STATEMENT OF AFFAIRS TO OFFICIAL LIQUIDATOR:

Who shall verify and submit Statement of Affairs:
Directors, chief executive, chief financial officer and secretary of the company shall verify and submit a statement of affairs of company in prescribed form to Provisional Manager or Official Liquidator.

When shall Statement be submitted:
Statement shall be submitted **within 15 days from relevant date.** Provisional Manager, Official Liquidator or Court may **extend this time upto 45 days.**

Relevant date means date of appointment of Provisional Manager. If no such appointment is made, the date of winding up order.

What particulars Statement shall contain:

1. Particulars of company's **assets and liabilities.**
2. **Cash** in hand and Cash at **bank.**
3. The names and addresses of the **creditors** showing separately:
   - Secured debt (with particulars of security given)
   - Unsecured debt
4. Receivables and amount likely to be realized along with names, addresses and occupation of debtors.
5. If any property is not in custody or possession of company, name and place of person in whose custody is this.
6. Places where company conducted its business in last **180 days** from relevant date and name of incharges there.
7. Detail of pending suits in which company is a party.
8. Any other particulars which Provisional Manager, Official Liquidator or Court may require (including information regarding secret reserves, or personal assets of directors).

Statements from Other Officials:
Provisional Manager or Official Liquidator, subject to directions of the Court, may also require following persons to submit a statement regarding affairs of company:
(i) Who have been Directors, Chief Executive, CFO, Secretary or other officer **within one year** before relevant date.
(ii) Who have taken part in formation of company within said year (in 'i' above).
(iii) Who were in employment of company within said year (in 'i' above).

Reimbursement of Expenses:
Provisional Manager or Official Liquidator shall pay reasonable expenses to persons making the statement.

Right to inspect and get copy of Statement:
A creditor or contributory of the company (or their agent):
- can inspect and
- get copy, or extract of Statement, on payment of prescribed fee.

If a person untruthfully state himself to be a creditor or contributory, it will be an offence punishable under Pakistan Penal Code on application of Provisional Manager/Official Liquidator.

Penalty:
Penalty of Level 2.

CONCEPT REVIEW QUESTION

Q.9
On 15th March 2021, the Court ordered winding up XYZ Limited and appointed Naveed as official liquidator. Subject to direction of the Court, Naveed may require Hamid (former CFO of XYZ Limited who had resigned six months before the date of winding up order) to prepare and submit a statement of affairs. Can Official Liquidator require Hamid to prepare statement? If so, what remuneration Hamid can receive?

(ICAP Book: Chapter 12 – Example # 09)

LO 7: REPORT BY OFFICIAL LIQUIDATOR:

When to submit Report:

As soon as possible after receipt of Statement of Affairs, but within **60 days** from Winding-Up Order.

Whom to submit Report:

- To Court and
- Simultaneously a certified copy to Registrar.

What particulars Report shall contain:

1. Details of assets of company, including their location and current value (assigned by registered valuer).
2. Cash in hand, Cash at bank, and Negotiable Instruments.
3. Amount of Authorized and Paid-up Capital.
4. Existing and Contingent liabilities, including particulars of creditors showing separately:
    a. Secured debt (with particulars of security given)
    b. Unsecured debt
5. Receivables and amount likely to be realized along with names, addresses and occupation of debtors.
6. Amount receivable from contributories.
7. Details of subsisting (i.e. ongoing) contracts, joint-ventures and collaborations (if any).
8. Details of trademarks and intellectual properties of company (if any).
9. Details of legal cases filed by or against the company (if any).
10. Details of holding and subsidiary companies (if any).
11. Any other information which Court may direct, or Official Liquidator may consider necessary.

Official Liquidator shall also:

- report on manner in which company was formed or promoted, and whether any fraud has been committed by persons involved in formation, promotion or management.
- make report on viability of business, or on steps which may maximize value of assets.
- Make further reports if directed by Court.

PART 3 – OTHER MODES OF WINDING UP

LO 8: OTHER MODES OF WINDING UP:

Voluntary Winding Up:

Circumstances:

- If Articles fix duration and that period is expired, or Articles state an event for dissolution of company and that event occurs, then company may be wound up voluntarily by passing a **Resolution.**
- If Articles do not state duration or event, then company may be wound up voluntarily by passing a **Special Resolution.**

Commencement:

At time of passing resolution of winding up.

In voluntary winding up, liquidator is appointed by company.

Winding Up Subject to Supervision of Court:

Circumstances:

If company has passed a resolution for voluntary winding up, Court (on its own, or on application of entitled persons) may make order to wind up company under supervision of Court.

Court shall have same jurisdiction over legal proceedings as under winding up by Court (e.g. Court has powers to replace liquidator).

CONCEPT REVIEW QUESTION

Q. 10

Carrot Limited (CL) was formed for a period of three years. The period of three years is due to complete on 31 December 2021. However, the project which the company had undertaken is still in progress. Advise the directors of CL regarding the legal status of CL on completion of three years while work on the project is not yet complete.

(ICAP Book: Chapter 12 – Practice Question # 03)

Q. 11

State the situations under which a company may be wound-up voluntarily.

(ICAP Book: Chapter 12 – Practice Question # 04)

LO 9: CONVERSION OF MODE OF WINDING UP:

Conversion into Winding up by Court:
If a company is being wound up voluntary or subject to supervision of Court, entitled persons can file a petition to Court for winding up by Court.

Court shall make winding up order on such petition only if it is satisfied that existing winding up mode cannot be continued having due regard to interest of creditors, contributories or to public interest.

CONCEPT REVIEW QUESTION

Q. 12
XYZ Limited passed a special resolution that the company be wound up voluntarily and appointed a liquidator to carry on the process of winding up. One of the major creditor is not satisfied with the liquidation process and filed a petition that winding up to be converted to winding up by the Court and an official liquidator be appointed accordingly. Can mode of winding up be converted into winding up by Court?

(ICAP Book: Chapter 12 – Example # 06)

APX 1: OBJECTIVE TYPE QUESTIONS (ADAPTED FROM ICAP STUDY TEXT):

Select the most appropriate answer from the options available for each of the following Multiple Choice Questions. Each MCQ carries ONE mark. These questions are adapted from ICAP's Study Text.

The winding up of a company may be:
(a) Voluntary
(b) Voluntary subject to the supervision of the Court
(c) Compulsory by the Court
(d) Any of the above

A company may be wound up by the Court if the company has made a default in filing with the registrar:
(a) its financial statements and annual returns for immediately preceding two consecutive financial years.
(b) its financial statements or annual returns for immediately preceding two consecutive financial years.
(c) its financial statements or annual returns for three consecutive financial years.
(d) its financial statements or annual returns for immediately preceding three consecutive financial years.

The promotion or the carrying on of any scheme or business shall not be deemed to be an unlawful activity:
(a) The scheme involves raising un-authorised deposits from the general public indulging in referral marketing, multi-level marketing (MLM), Pyramid and Ponzi Schemes.
(b) The scheme involves raising deposits from the general public against issue of securities of a body corporate to the public after due approval of the prospectus.
(c) A scheme whereby, in return for a deposit of a sum of money in cash or by means of coupons, any right or benefit, determined by chance, is assured or promised.
(d)A scheme or any other business activity notified by the Commission to be against public policy or a moral hazard.

In which of the following situations, a company shall be deemed to be unable to pay its debts:
(a) If a creditor of Rs. 5 million duly made a demand requiring the company to pay the sum so due and the company has for 21 days thereafter neglected to pay/secure/compound the sum.
(b) If a creditor of Rs. 5 million duly made a demand requiring the company to pay the sum so due and the company has for 30 days thereafter neglected to pay/secure/compound the sum.
(c) If a creditor of Rs. 75,000 duly made a demand requiring the company to pay the sum so due and the company has for 21 days thereafter neglected to pay/secure/compound the sum.
(d) If a creditor of Rs. 75,000 duly made a demand requiring the company to pay the sum so due and the company has for 30 days thereafter neglected to pay/secure/compound the sum.

In which of the following situations, a contributory shall be entitled to present a petition for winding up a public company:
(i) the number of members is reduced below three.
(ii) the shares in respect of which he is a contributory have devolved on him through the death of a former holder.

(a) (i) only
(b) (ii) only
(c) Neither (i) nor (ii)
(d) Both (i) and (ii)

The Commission shall be entitled to present a petition for the winding up of a company without an investigation into the affairs of the company:
(a) If the company is carrying on a business not authorised by its memorandum.
(b) If sole business of the company is the licensed activity and that licence is revoked.
(c) If the business of company is being conducted in a manner oppressive to any of its members or persons concerned in the formation of the company
(d) The management of the company might be guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members

A winding up of a company by the Court shall be deemed to commence:
(a) on the date of winding up order by the Court and not earlier.
(b) after a period of 7 days from the date of winding up order.
(c) after a period of 30 days from the date of winding up order.
(d) at the time of the presentation of the petition for the winding up.

8. The articles of association of PQR Limited state that the company should be dissolved after completion of a metro transportation project and handing it over to relevant authorities. The project has recently been completed, became operational and relevant authorities have taken control of it and issued a certificate in this regard. In order to effect voluntary winding up of PQR Limited:
(a) The board of directors need to pass a resolution in board meeting.
(b) An ordinary resolution in the general meeting is required.
(c) A special resolution in the general meeting is required.
(d) Approval from the Commission is required.

9. Which of the following statement is correct in relation to appointment of official liquidator?
(a) A person shall not be appointed as provisional manager or official liquidator of more than five companies at one point of time.
(b) For the purpose of the winding up of companies by the Court, the Commission shall maintain a panel of persons from whom the Court shall appoint a provisional manager or official liquidator of a company ordered to be wound up.
(c) Where a provisional manager is appointed by the Court, he shall always have the same powers as a liquidator.
(d) An official liquidator may resign or quit his office before conclusion of the liquidation proceedings by giving 30 days' notice to the Court.

10. A provisional manager was appointed on 24th October 2021 and winding up order was issued by the Court on 3 January 2022, from whom he cannot require the statement (of affairs) in prescribed form?
(a) General Manager (operations) whose last day of employment with the company was 26 December 2020.
(b) Chief Operating Officer whose last day of employment with the company was 12 January 2021.
(c) Senior Manager (logistics) whose last day of employment with the company was 18 February 2021.
(d) Chief Financial Officer whose last day of employment with the company was 30 September 2020.

Suggested Solution

1.	(d)	All three are modes of winding up as stated in the Act.
2.	(b)	Its financial statements or annual returns for immediately preceding two consecutive financial years. [
3.	(b)	All other options are deemed unlawful activity.
4.	(b)	If a creditor of Rs. 5 million duly made a demand requiring the company to pay the sum so due and the company has for 30 days thereafter neglected to pay/secure/compound the sum.
5.	(d)	Both situations independently entitle a contributory to present the petition for winding up.
6.	(b)	If sole business of the company is the licensed activity and that licence is revoked, no investigation into the affairs of the company shall be required to present the petition for winding up of the company.
7.	(d)	A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.
8.	(b)	A company may be wound up voluntarily, if the company in general meeting passes a resolution requiring the company to be wound up voluntarily on the occurrence of any event in respect of which the articles provide that the company should be dissolved.
9.	(b)	A person cannot be appointed in more than 3 companies at a point in time. The powers of provisional manager may be restricted by the Court. The official liquidator is not allowed to resign or quit except in case of disability.
10.	(d)	The "relevant date" means, in a case where a provisional manager is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding up order. The statement cannot be required from those who left more than one year before the relevant date.

APX 2: SOLUTIONS TO PRACTICE QUESTIONS:

Q.1
Yes. In such cases, Court orders winding up on just and equitable basis.

Q.2
The Court may order that the company should be wound up. Past relationship between directors made it 'unjust or inequitable' to insist on continuing company the existing structure of company.

Q.3
ANFL would be deemed unable to pay debts:
1. If a creditor of more than **Rs. 100,000** serves a notice at registered office of company, and within 30 days company neither pays, nor satisfies creditor, or
2. If execution of an order of Court (or other authority) in favour of creditor remains unsatisfied, or
3. It is proved to court that co. is unable to pay debt (Court shall take into account contingent and prospective liabilities in determining this).

Q.4
Following persons may file a petition for winding up by Court:
1. Company
2. Creditors
3. Contributories
4. Registrar
5. Commission (or its authorized person)

Note for students: If marks are higher in exam question, Conditions are petition must also be written in answer.

Q.5
The winding up shall be deemed to commence on 24th February.

Q.6
Yasir shall have same powers as a liquidator.

Q.7
The Court may appoint Zameer as official liquidator if creditors are owed 60% or more of the amount of issued share capital of XYZ Limited.

Q.8
An Official Liquidator shall not resign before conclusion of liquidation, except on personal disability to the satisfaction of Court.

Therefore, Zahid cannot resign before completion of winding up proceedings without sanction from Court. Board does not have any authority to appoint, remove or allowing resignation of Official Liquidator.

Q.9
As Hamid has been CFO of the company within 1 year preceding relevant date, liquidator can require statement from Hamid. Liquidator can pay reasonable expenses to Hamid.

Q.10
- If Articles fix duration and that period is expired, company can be dissolved but only after passing a resolution.
- In this situation, passing a resolution on expiry of duration is not desirable as company may not be able to sell its assets and settle liabilities in current stage.
- Therefore, CL must alter its articles and extend period fixed for duration of company to continue its activities until completion of the project.

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Q. 11

A company may be wound up voluntary if:

- **Articles fix duration and that period is expired, or Articles state an event for dissolution of company and that event occurs, and company passes a resolution.**
- **Special resolution is passed to wind-up company.**

Q. 12

If a company is being wound up voluntary or subject to supervision of Court, entitled persons can file a petition to Court for winding up by Court. However, Court shall make winding up order on such petition only if it is satisfied that existing winding up mode cannot be continued with due regard to interest of creditors, contributories or to public interest.